# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1920

No. [redacted]214

J. W. GOLDSMITH, JR.-GRANT COMPANY, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

FILED DECEMBER 30, 1919.

(27,407)

# (27,407)

# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1919.**

# No. 652.

J. W. GOLDSMITH, JR.-GRANT COMPANY, PLAINTIFF IN ERROR,

*vs.*

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

INDEX.



Byron S. Adams & Detweiler (Inc.), Printers, Washington, D. C., February 2, 1920.

*Libel.*

UNITED STATES OF AMERICA,
*Northern District of Georgia,*
*Northern Division:*

District Court of the United States for the Northern District of Georgia.

To the Honorable the Judge of the District Court of the United States for the Northern District of Georgia:

Hooper Alexander, Attorney of the United States for said District, who prosecutes for the United States, comes into Court and exhibits this information against the following property, to-wit: One Hudson automobile, motor No. 156624, of the appraised value of $800.00, which property was duly seized in said District, on land, on the 15th day of October, A. D., 1918, by R. E. Tuttle, United States Deputy Collector of Internal Revenue for the District of Georgia, and is still held in custody within said District, in pursuance of such seizure, and thereupon the said Attorney doth allege and give the Judge to understand as follows:

First. That by an Act of the Congress of the United States, passed on the 13th day of July A. D. 1866, it was, in the 14th section thereof, enacted and declared that:

"Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels, proper or intended to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case all the casks, vessels, cases, or other packages whatsoever, respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit and concealment thereof, respectively, shall be forfeited."

Secondly. That heretofore, to-wit, on the 15 day of October, A. D. 19-, in said District, and before said seizure, the said property above described was, by Jim Thompson, Mangum Wilson and E. J. McGill used in the removal and for the deposit and concealment of fifty eight gallons of distilled spirits, with intent to defraud the United States of the tax thereon, the said distilled spirits then and there being a commodity for and in respect whereof a tax of $3.20 per gallon was and is imposed by the laws of the United States, which said tax then and there had not been paid, contrary to the form and Statute of the United States, in such case made and provided. The

said Attorney of the United States, on behalf of the United States, saith that all and singular the premises are true.

Wherefore, he prays that process in due form of law may issue against the said property to enforce the seizure and condemnation of the same, and requiring notice to be given to all persons concerned in interest, to appear and show cause on the 25th day of November, 1918, the return day of said process, why such property should not be declared forfeited, and that the same then and there be adjudged condemned and forfeited to the United States.

HOOPER ALEXANDER.
*United States Attorney.*

3 GEORGIA,
*Fulton County:*

Personally appeared before the undersigned attesting officer R. E. Tuttle, who on oath says that the allegations set forth in the foregoing libel are true.

R. E. TUTTLE.

Sworn to and subscribed before me this 30th day of October, 1918.

R. Q. FULLER.
*Deputy Clerk U. S. District Court,*
*Northern District of Georgia.*

*Order.*

The foregoing libel considered and allowed. Let the same be filed and made returnable for hearing and be heard on the 25th day of November, 1918. The Marshal is directed to give the usual notice of the time and place of hearing by publication one time in the "Atlanta Constitution" at least fourteen days before the time herein fixed for the hearing of said cause.

This 30th day of October, 1918.

WM. T. NEWMAN.
*United States Judge.*

4 *Summons.*

In the United States District Court for the Northern District of Georgia, Northern Division.

THE UNITED STATES OF AMERICA

vs.

ONE HUDSON AUTOMOBILE, Motor No. 176,624, of the Appraised Value of $800.00, Seized October 15, 1918, by R. E. Tuttle, Deputy Collector.

Information in Rem.

The President of the United States to the Marshal of the Northern District of Georgia, Greeting:

The Defendant above named, *are* hereby required, personally or by attorney, to be and appear at the next term of said Court, to be

held in the City of Atlanta, Georgia, on the 25th day of November (1918) next, then and there to answer the United States of America in an action of Information in Rem as in default thereof the said Court will proceed as to justice shall appertain.

Witness, The Honorable William T. Newman, United States District Judge for the Northern District of Georgia, this the 30th day of October A. D. 1918.

O. C. FULLER,
*Clerk.*

[SEAL.] By R. Q. FULLER,
*Deputy Clerk.*

Filing.

Filed in the Clerk's Office this the 30th day of October A. D. 1918.

O. C. FULLER,
*Clerk.*

By R. Q. FULLER,
*Deputy Clerk.*

2 *Marshal's Return.*

I certify that I served the within Information In Rem and Summons, by serving copies thereof on the parties at the places, time, and in the manner stated below:

Name of persons served: —.

How served: Served by advertisement in Atlanta Constitution.

When served: —.

Where served: —.

The return of Howard Thompson U. S. Marshal, this 9th day of November A. D. 1918. By Robert C. W. Ramspeck, Deputy.

Returned into Clerk's Office and filed this the 14th day of November, 1918.

O. C. FULLER,
*Clerk.*

By J. D. STEWARD,
*Deputy Clerk.*

6 *Intervention of J. W. Goldsmith, Jr., Grant Company, Claimant.*

In the United States District Court for the Northern District of Georgia.

No. 557. In Rem.

THE UNITED STATES

vs.

1 1915 HUDSON 6-40 TOURING CAR, #176,624, Georgia License 73469; Inside Tag, #76144; Motor, #80205.

*Condemnation Proceedings.*

And now comes J. W. Goldsmith, Jr.-Grant Company, Inc., and intervenes in the above stated matter and shows to the court as follows:

1. On October 11, 1918, your petitioner agreed to sell J. G. Thompson and W. M. Lane 1 Hudson touring car as shown by contract copy of which is hereto attached marked Exhibit "A", said contract having been recorded on October 15, 1918, in Book 208, page 362 as shown by the endorsement thereon.

2. Title to said automobile was retained in petitioner to secure the balance due thereon, which at this time is $650.00 besides interest, from October 11, 1918 at 8% per annum.

3. Said automobile was seized by the United States Marshal for the above district in the possession of the said J. G. Thompson, and your petitioner is informed that whiskey was found therein, and on that account condemnation proceedings have been instituted against said automobile by the district attorney.

4. Petitioner shows that if the said Thompson, or any other person, used said automobile for the purpose of transporting liquor or if liquor was used therein it was done without the consent or knowledge of petitioner.

5. Petitioner agreed to sell said automobile in good faith and is the owner thereof and has not in any way consented to the illegal use thereof by Thompson or any one else.

6. Petitioner is informed that the said automobile at this time is in a garage at Jasper, Georgia, and is expensive for the court to keep.

Wherefore: Petitioner prays that it be permitted to make bond and replevy said automobile.

DORSEY, SHELTON & DORSEY,
*Attorneys for Petitioner.*

GEORGIA,
*Fulton County:*

Personally appeared before the undersigned Rees Marshall who on oath says that he is Secretary of J. W. Goddsmith, Jr.,Grant Company Inc., and that the facts stated in the above and foregoing petition are true and correct.

REES MARSHALL.

Sworn to and subscribed before me this 28th day of October, 1918.

BESSIE BITTICK,
[SEAL.] *Notary Public, Georgia, State at Large.*

The foregoing petition read, considered and allowed. The Marshal is directed to release the automobile seized in the above matter to said J. W. Goddsmith, Jr.,Grant Company Inc. upon its giving bond with good and sufficient security, to be approved by the Clerk of the Court, in the sum of $800.00, the appraised value of the property seized payable to the United States and conditioned well and truly to abide by and perform the final order, decree or judgment of the court having cognizance of the claim of the United States upon the property seized as aforesaid, and to pay the amount of the appraised value thereof, as he or they may be ordered by said court.

This October 12, 1918.

WM. T. NEWMAN,
*United States Judge.*

Filed in the Clerk's Office November 12, 1918. G. C. Fuller, Clerk, by Jos Dean Steward, Deputy Clerk.

EXHIBIT "A."

GEORGIA,
*Fulton County:*

This agreement witnesseth: The undersigned has purchased of J. W. Goddsmith, Jr.,Grant Company under the terms and conditions herein specified the following property, to-wit: Hudson 6-40 Touring Car, #80263, for the sum of Nine Hundred and Twenty-Five Dollars, to-wit, $925.00 cash, receipt of which is hereby acknowledged, and the balance in *and* twelve monthly installments of Fifty-Four and 16 100 dollars, the last one being for Fifty-Four & 24 100 dollars and deferred payments being evidenced by promissory notes, bearing interest from date at 8% per annum.

Title shall remain in vendor until the full purchase price has been paid, and if default is made in any payment when due or within five days thereafter the entire amount shall become due and payable at the option of the vendor. Vendee agrees not to make any sale transfer or assignment of this contract or any sale or delivery of the property above described to another, except upon written con-

sent of the vendor, and any attempt to do so shall make the full pu-
chase price due and payable at the option of the vendor.

Said property shall be kept in good repair, and shall not be move
from this county and kept elsewhere without the written consent o
vendor.

Vendee shall keep said property insured against fire and theft for
the amount due J. W. Gold-mith, Jr., Grant Company, with los
payable clause to vendor herein, pay taxes thereon and in the even
same is lost, injured or destroyed by fire or otherwise, the loss shall
fall on the purchaser, and the indebtedness herein described, shall
in no event be effected or discharged thereby.

The maker, securities or endorsers of this obligation waive and re-
nounce for themselves and families all homestead and exemption
rights they might otherwise be entitled to under any provisions o
the State or Federal Constitution or laws; and further waive demand
protest and notice of demand, protest and nonpayment, and in eve
this obligation is placed in the hands of an attorney for collection
agree to pay the costs of collection, including 10% attorney's fee

No change in this contract or collateral agreement will be
9 recognized unless endorsed hereon in writing and signed by
both parties.

Time is of the essence of this contract and of each and every pro-
vision herein, and upon breach thereof vendor may at his option de-
clare the contract void, and take possession of said property without
notice or legal process of any kind, and payments by vendee shall
be applied as rent of said property, for depreciation in value, it being
agreed between parties hereto that $10.00 per day is and shall be
considered a fair rental for said property from the date hereof.

Given under our hands and seals this the 11th day of Octobe
1918.

J. G. THOMPSON. [L. S.]
W. M. LANE. [L. S.]
J. W. GOLDSMITH, Jr., GRANT
CO., INC.,
By REES MARSHALL,
*Sec'y.* [L. S.]

Witnessed by and signed, sealed and delivered in the presence
WARD A. CHAPMAN,
*Notary Public, Fulton County, Georgia.*

*(Notation on Back of Agreement.)*

Georgia, Fulton County. Clerk's Office Superior Court. Fil
for record this the 15th day of October, 1918, at 8:30 o'clock A.
Recorded in Book 298 page 362 this 15th day of October, 191
Arnold Broyles, Clerk.

59 *Claim Affidavit and Cost Bond.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

STATE OF GEORGIA,
*County of Fulton:*

Before the undersigned attesting officer personally came Rees Marshall, who on oath says that he is Secretary of J. W. Goddsmith, Jr.,-Grant Company, Inc., a corporation of said State and County, and that on oath further says that said corporation is the true and bona fide owner of the following described property, to-wit:

1-1915 6-40 model Hudson Touring Car No. 156024, Georgia license #73469, inside tag #56144, Motor #80295, which said property on the 16th day of October, 1918, in the County of Dawson in said State, by R. E. Tuttle, Deputy Marshal, Collector Internal Revenue for the Northern District of Georgia, was seized in the possession of J. G. Thompson, as forfeited to the United States for the alleged violation of the Internal Revenue Laws of the United States, and more particularly for the alleged violation of §3450 of the Revised Statutes of the United States. Said automobile is now seized under process of the court and is in possession of the United States Marshal in and for said District.

The said J. W. Goddsmith, Jr.-Grant Company, Inc., holds properly recorded retention of title contract to said automobile to secure payment of balance of the purchase price due thereon in the sum of Six Hundred and Fifty and no 100 Dollars ($650.00) besides interest from October 11, 1918, at 8% per annum.

REES MARSHALL.

Sworn to and subscribed before me this 11th day of November, 1918.

WARD A. CHAPMAN,
[SEAL.] *Notary Public, Fulton County, Georgia.*

[illegible] *Bond.*

STATE OF GEORGIA,
*County of Fulton:*

Know all men by these presents, that we, J. W. Goddsmith, Jr.,-Grant Company Inc., a corporation of said State and County, as principal, and J. W. Goddsmith, Jr., of said State and County, as surety, do hereby jointly and severally acknowledge ourselves to be held and firmly bound unto the United States of America in the sum of $250.00 (Two Hundred and Fifty Dollars) for the true payment of which we bind ourselves, our heirs, executors and administrators jointly and severally, by these presents.

The condition of this bond is that whereas certain property, to-wit:

1–1915 6–40 Model Hudson Touring Car, No. 156624, Georgia license #73469, inside tag #56144, Motor #80295 was on the 16th day of October 1918 seized by R. E. Tuttle, Deputy Marshal, Collector Internal Revenue for the Northern District of Georgia, which said property has been claimed by the said J. W. Goldsmith, Jr.-Grant Company Inc. as shown by claim affidavit filed herewith.

Now in case of the condemnation of the property seized as aforesaid the said J. W. Goldsmith Jr., Grant Company Inc., shall well and truly pay all the costs and expenses of the proceedings to obtain such condemnation, then this bond to be void, otherwise of full force and virtue.

J. W. GOLDSMITH, JR.–GRANT COMPANY, INC.,
[SEAL.] By REES MARSHALL, *Sec'y.* [L. S.]
*Principal.*
J. W. GOLDSMITH, JR. [L. S.]
*Surety.*

Signed, sealed and acknowledged before me this 14th day of November, 1918.

[SEAL.] WARD A. CHAPMAN,
*Notary Public, Fulton County, Georgia.*

12 *Affidavit of Individual Surety.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

STATE OF GEORGIA,
*County of Fulton, ss:*

Personally appeared J. W. Goldsmith, Jr., who, being duly sworn says that he is one of the sureties mentioned in the annexed bond of J. W. Goldsmith, Jr.–Grant Company Inc., that he is by occupation an Auto dealer, doing business at Atlanta, Fulton County, and residing at Atlanta, in Fulton County, that he is now worth the sum of — dollars over and above all debts and liabilities which he owes or has incurred, exclusive of property exempt from execution and under the homestead laws of the State; that the officer taking the bond to which the affidavit relates has called his attention to the statutes of this State providing and defining the homestead and other exemptions allowed to debtors in said State; that he understands the nature thereof and the amount of the exemptions so allowed, and that he is worth the said sum of Ten Thousand Dollars ($10,000.000) over and above said exemptions; That he is not responsible to the United States as surety on any other bond.

J. W. GOLDSMITH, JR.

Sworn to and subscribed before me this 11th day of November, A. D. 1918, and I hereby certify that I believe the above named J. W. Goldsmith, Jr., is the identical person who subscribed the annexed bond as one of the sureties therein: that I called his attention to the Statutes of this State providing and defining the homestead and other exhemptions allowed to debtors therein, and that he understands the nature thereof.

[SEAL.] WARD A. CHAPMAN,
*Notary Public, Fulton County, Georgia.*

Filed in the Clerk's Office November 12th, 1918. O. C. Fuller, Clerk. By J. D. Steward, Deputy Clerk.

13 *Bond for Release of Seized Property.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

STATE OF GEORGIA,
*County of Fulton:*

Know all men by these presents, that we, J. W. Goldsmith, Jr.,-Grant Company, Inc., a corporation of said State and county as principal, and J. W. Goldsmith, Jr., of said State and County, as surety, do hereby jointly and severally acknowledge ourselves to be held and firmly bound unto the United States of America in the sum of Eight Hundred Dollars ($800.00) for the true payment of which we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

The condition of this bond is that whereas certain property to-wit: 1-1915 6-40 model Hudson Touring Car No. 156321, Georgia license #73469, inside tag #56144, motor #80295 was on the 16th day of October, 1918, seized by R. E. Tuttle, Deputy Marshal, Collector Internal Revenue for the Northern District of Georgia, which said property has been claimed by the said J. W. Goldsmith, Jr.,Grant Company, Inc., as shown by claim affidavit filed herewith.

Now in case of the condemnation of the property seized as aforesaid the said J. W. Goldsmith, Jr.,-Grant Company, Inc., shall well and truly pay the amount of the appraised value thereof as may be ordered by the court, then this bond to be void, otherwise of full force and virtue.

J. W. GOLDSMITH, JR.-GRANT COMPANY, INC.,
[SEAL.] By REES MARSHALL, *Sec'y.* [L. S.]
*Principal.*
J. W. GOLDSMITH, JR. [L. S.]
*Surety.*

Signed, sealed and acknowledged before me this 11th day of November, 1918.

[SEAL.] WARD A. CHAPMAN,
*Notary Public, Fulton County, Georgia.*

Filed in the Clerk's Office November 12th, 1918. O. C. Fuller, Clerk. By J. D. Steward, Deputy Clerk.

14 *Answer of Claimant.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

No. 557. In Rem.

UNITED STATES

vs.

1 HUDSON AUTOMOBILE, J. W. GOLDSMITH, JR., GRANT CO., INC., Claimant.

*Condemnation.*

Now comes claimant, J. W. Goldsmith, Jr.-Grant Company, Inc., and answers the information filed by Hooper Alexander, Attorney for the United States for said District as follows:

1. Claimant admits the seizure of the automobile, but for want of sufficient information is unable either to admit or deny the allegations of preamble of said information with reference to the date of the seizure, or by the person by whom it was seized. The motor number of said automobile is incorrectly set forth, the correct number being 80295. Under order of Court claimant has made affidavit, given bond and is now in possession of the automobile seized, and that it is the same automobile described in contract hereto attached and marked Exhibit "A."

2. Claimant admits that the 14th Section of the Act of Congress of 1866 is correctly set forth in the first paragraph of the information, but denies that said Act authorizes the condemnation of the automobile seized in said case. Claimant contends that said Act of Congress violates the 4th, 5th and 9th amendments of the Constitution of the United States and each of them, in that it undertakes to authorize the forfeiture of property irrespective of the guilt or innocence of the owner, and even when the owner is ignorant of the illegal use of his property by another.

3. Claimant denies each and every allegation of the 2nd paragraph of said information and demands strict proof thereof.

4. Further answering said information claimant says that the automobile seized in said case is the property of this claimant. On

October 11th, 1918, claimant delivered the custody of said automobile to J. G. Thompson and W. M. Lamb, under an agreement of purchase, as per copy hereto attached marked Exhibit "A" and made a part of this answer, said agreement having been duly and properly recorded in the office of the Clerk of the Superior Court of Fulton County in Book 298 page 362 as shown by endorsement thereon.

5. The said J. G. Thompson and W. M. Lamb were at the time of the seizure of said automobile and still are indebted to claimant in the sum of Six Hundred and Fifty Dollars ($650.00) with interest from October 11th, 1918, at 8% per annum, being the balance due on the purchase price of said automobile, and legal title to the same is in claimant as shown by said contract of purchase.

6. It is provided in said contract as follows:

"Title shall remain in vendor until the full purchase price has been paid, and if default is made in any payment when due or within three days thereafter the entire amount shall become due and payable. Said property shall be kept in good repair and shall not be moved from this county and kept elsewhere without the written consent of vendor." If the person named in said information used said automobile in the manner alleged they did so without the knowledge or consent of this claimant. This claimant in no way participated in the illegal use of said automobile, if it was used illegally, and is not bound by the acts of the persons named in said information. Said automobile is the property of this claimant and cannot be condemned under the Statute referred to in the information, for to permit the condemnation thereof would deprive this claimant of its property without due process of law, and amount to the taking of private property for public use without just compensation in violation of the 5th amendment of the Constitution of the United States. The condemnation of said automobile would likewise be violative of the 4th Amendment to the Constitution of the United States providing that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated."

7. Claimant contends that the Statute described in said information permits only the condemnation of the right, title and interest which the persons named in the information had therein, even if they were using it illegally, and further contends that any other construction of said act would make said statute violative of the constitutional provisions referred to above. Until this claimant violates the law its property cannot be forfeited, nor can its property be confiscated by the Government without just compensation simply because another person without its knowledge or consent has violated the law.

8. Claimant further contends that under the agreement of purchase attached as Exhibit "A" hereto vendees had no right to take or permit another to take said automobile outside of Fulton County,

and that in taking said automobile to Dawson County, without claimant's knowledge or consent, a distance of about one hundred miles from Fulton County, where it was seized, they violated their contract and claimant is not bound by their conduct, and said property cannot be condemned but it should be decreed that claimant's right, title and interest therein has not been forfeited.

Wherefore: The premises considered and this claimant having fully answered prays as follows:

(1) That it be decreed that the automobile seized in said case is the property of this claimant, and that its claim thereto be allowed, set up and enforced and proper order be entered restoring said property to claimant and dismissing the proceedings to condemn the same.

(2) That in the event it should be adjudged that any persons other than this claimant have an equity in said automobile subject to condemnation, that the court by proper proceedings ascertain the value of that equity and that it alone be condemned.

(3) For such other and further relief as may be lawful and proper.

DORSEY, SHELTON & DORSEY,
*Attorneys for J. W. Goldsmith, Jr.,-Grant Co., Inc.*

17 GEORGIA,
*Fulton County:*

Personally appeared before the undersigned attesting officer, Rees Marshall, who on oath says that he is Secretary to J. W. Goldsmith, Jr.,-Grant Company Inc., the above claimant, and that the allegations set forth in the foregoing answer and claim are true.

REES MARSHALL.

Sworn to and subscribed before me this 26th day of November, 1918.

[SEAL.] BESSIE BITTICK,
*Notary Public, Georgia, State at Large.*

Filed in the Clerk's Office November 27th, 1918.

O. C. FULLER,
*Clerk,*
By J. D. STEWARD,
*Deputy Clerk.*

18 EXHIBIT "A."

GEORGIA,
*Fulton County:*

This agreement witnesseth: The undersigned has purchased of J. W. Goldsmith, Jr.,-Grant Company under the terms and conditions herein specified the following property, to wit: Hudson 6-40 Touring Car #80295 for the sum of Nine Hundred and Seventy

Five Dollars, to wit, $325.00 cash, receipt of which is hereby acknowledged, and the balance in *and* twelve monthly installments *of* Fifty Four and 16/100 dollars, the last one being for Fifty-Four & 24/100 dollars and deferred payments being evidenced by promissory notes, drawing interest from date at 8% per annum.

Title shall remain in vendor until the full purchase price has been paid, and if default is made in any payment when due or within three days thereafter the entire amount shall become due and payable at the option of the vendor. Vendee agrees not to make any sale, transfer or assignment of this contract, or any sale or delivery of the property above described to another, except upon written consent of the vendor, and any attempt to do so shall make the full purchase price due and payable at the option of the vendor.

Said property shall be kept in good repair, and shall not be moved from this county and kept elsewhere without the written consent of vendor.

Vendee shall keep said property insured against fire and theft for the amount due J. W. Goldsmith, Jr.-Grant Company, with loss payable clause to vendor herein, pay taxes thereon and in the event same is lost, injured or destroyed by fire or otherwise, the loss shall fall on the purchaser, and the indebtedness herein described, shall in no event be effected or discharged thereby.

The maker, securities or endorsers of this obligation waive and renounce for themselves and families all homestead and exemption rights they might otherwise be entitled to under any provisions of the State or Federal Constitution or laws; and further waive demand, protest and notice of demand, protest and nonpayment, and in case this obligation is placed in the hands of an attorney for collection agree to pay the costs of collection, including attorney's fees.

19 No change in this contract or collateral agreement will be recognized unless endorsed hereon in writing and signed by both parties.

Time is of the essence of this contract and of each and every provision herein, and upon breach thereof vendor may at his option declare the contract void, and take possession of said property without notice or legal process of any kind, and payments by vendee shall be applied as rent of said property, for depreciation in value, it being agreed between parties hereto that $10.00 per day is and shall be considered a fair rental for said property from the date thereof.

Given under our hands and seals this the 11th day of October, 1918.

J. G. THOMPSON, [L. S.]
W. M. LANE, [L. S.]
J. W. GOLDSMITH, JR.-GRANT CO., INC.,
By REES MARSHALL,
*Sec'y.* [L. S.]

Witnessed by and signed, sealed and delivered in the presence of
WARD A. CHAPMAN,
*Notary Public, Fulton County, Georgia.*

*(Notation on Back of Agreement.)*

Georgia, Fulton County. Clerk's Office Superior Court. Filed for record this the 15th day of October, 1918, at 8:30 o'clock A. M. Recorded in Book 298 page 352 this 15th day of October, 1918. Arnold Broyles, Clerk.

20 *Claimant's Amendment to Answer and Order Allowing Amendment.*

In the District Court of the United States for the Northern District of Georgia, Northern Division, October Term, 1918.

No. 557. In Rem.

THE UNITED STATES
vs.
1 HUDSON AUTOMOBILE, J. W. GOLDSMITH, JR.-GRANT CO., INC., Claimant; J. W. GOLDSMITH, JR., Surety.

J. W. Goldsmith, Jr.-Grant Company Inc., comes and amends its answer heretofore filed in the following particulars:

Claimant alleges that the seizure of said automobile and the attempt to condemn or confiscate the same, if successful, will be an illegal and unconstitutional invasion of the rights of the claimant, and a violation of its constitutional rights guaranteed it under the following provision of the amendment as *Article 5* of Article 8 of the Constitution of the United States as follows:

"No person shall be depreved of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

Claimant avers that the Act of Congress under which this seizure was made and under which this forfeiture is attempted to be had is known as §3450 of the revised statutes as set forth in the first paragraph of the information in said case.

Wherefore: Claimant prays that this amendment be allowed and that the judgment of the court be had accordingly.

C. T. & L. C. HOPKINS,
BELL, ELLIS & BELL,
DORSEY, SHELTON & DORSEY,
*Attorneys for J. W. Goldsmith, Jr.-Grant Company, Inc., Claimant.*

21 *Order.*

Agreement allowed and ordered filed as a part of the record in said case.

This January 16th, 1919.

WM. T. NEWMAN.
*United States Judge.*

Filed in the Clerk's Office January 16th, 1919. O. C. Fuller, Clerk, by J. D. Steward, Deputy Clerk.

22 *Agreed Statement of Facts and Order Allowing Same.*

In the District Court of the United States for the Northern District of Georgia, Northern Division, October Term, 1918.

No. 557. In Rem.

THE UNITED STATES

vs.

1 HUDSON AUTOMOBILE, J. W. GOLDSMITH, JR.-GRANT CO., INC., Claimant; J. W. GOLDSMITH, JR., Surety.

The parties to the above stated case agree that it may be tried on the following statements of facts, which are hereby agreed to as being the true facts in said case.

On October 11, 1918, J. W. Goldsmith, Jr.-Grant Company Inc., a corporation, engaged in the business of selling automobiles at Atlanta, Georgia, were the owners in fee simple of the Hudson automobile seized in this case. On that date they sold said automobile to J. G. Thompson, whose occupation is taxi-cab operator, and W. M. Lamb, whose occupation is newspaper business, both of whom reside in Fulton County, Georgia, under the following sale conditional contract:

GEORGIA,
*Fulton County:*

This Agreement Witnesseth: The undersigned has purchased of J. W. Goldsmith Jr.-Grant Company under the terms and conditions herein specified the following property, to-wit: Hudson 6-40 Touring Car #80295 for the sum of Nine Hundred and Seventy Five Dollars to-wit, $325.00 cash, receipt of which is hereby acknowledged and the balance in twelve monthly installments of Fifty four and 16/100 Dollars the last one being for Fifty four and 24/100 Dollars, and deferred payments being evidenced by promissory notes, drawing interest from date at the rate of 8% per annum.

Title shall remain in vendor until the full purchase price has been paid, and if default is made in any payment when due or within five days thereafter the entire amount shall become due and payable at the option of the vendor. Vendee agrees not to make any sale, transfer or assignment of this contract or any sale or delivery 23 of the property above described to another, except under written consent of the vendor, and any attempt to do so shall make the full purchase price due and payable at the option of the vendor.

Said property shall be kept in good repair, and shall not be moved from this county and kept elsewhere without the written consent of vendor.

Vendee shall keep said property insured against fire and theft for the amount due J. W. Goldsmith, Jr.-Grant Company with loss

payable clause to vendor herein, pay taxes thereon and in the event same is lost, injured or destroyed by fire or otherwise, the loss shall fall on the purchaser, and the indebtedness herein described, shall in no event be effected or discharged thereby.

The maker, securities or endorsers of this obligation waive and renounce for themselves and families all homestead and exhemption reights they might otherwise be entitled to under any provisions of the State of Federal Constitution or laws; and further waive demand, protest or notice of demand, protest, and non-payment, and in case this obligation is placed in the hands of an attorney for collection agree to pay the costs of collection, including 10% *per cent* attorney's fees.

No change in this contract or collateral agreement will be recognized unless endorsed hereon in writing and signed by both parties.

Time is of the essence of this contract and of each and every provision herein, and upon breach thereof vendor may at his option declare the contract void, and take possession of said property without notice or legal process of any kind, and payments by vendee shall be applied as rent on said property, and for depreciation in value, it being agreed between parties hereto that $10.00 per day is and same shall be considered a fair rental for said property from the date hereof.

Given under our hands and seals the 11th day of October 1918.

J. G. THOMPSON. [L. S.]
W. M. LAMB. [L. S.]
J. W. GOLDSMITH, JR.,-
GRANT CO., INC.,
By REES MARSHALL, *Sec'y.* [L. S.]

24 Witnessed by and signed, sealed and delivered in the presence of

WARD A. CHAPMAN,
*Notary Public, Fulton County, Georgia.*

Said contract was duly recorded in the Clerk's Office of Fulton Superior Court in Book 298 page 362 on October 15, 1918, that being the county of the residence of the said J. G. Thompson and W. M. Lamb at the time of the execution and recording of said contract. The balance of the purchase money due said J. W. Goldsmith Jr.-Grant Company Inc., has never been paid, and the said J. G. Thompson and W. M. Lamb were at the time said automobile was seized by the Government, and still are indebted to the said J. W. Goldsmith Jr.-Grant Company Inc., in the sum of Six Hundred and Fifty Dollars ($650.00) with interest from October 11th, 1918, at 8% per annum.

On October 15, 1918, said automobile was used by the said J. G. Thompson in the removal and for the deposit and concealment of fifty gallons of spirituous liquors with the intent on the part of the said J. G. Thompson to defraud the United States of taxes thereon. The said spirituous liquors then and there was a commodity for and in respect whereof a tax of $1.10 per gallon theretofore had been and then was imposed by the laws of the United States and which said tax had not been paid.

Said use of said automobile in violation of the law was without the knowledge or consent of J. W. Goldsmith, Jr.-Grant Company Inc., or any of its officers or employees. Never at any time did said company or any of its officers, or employees have any knowledge or notice or reason to suspect that said automobile was to be put or was being put to any illegal use until they received notice of the seizure of said automobile by the United States authorities on account of the said unlawful use thereof by the said J. G. Thompson. No officer or employee of said corporation participated in said illegal use directly or indirectly. Said corporation delivered the possession of said automobile to the said J. G. Thompson and W. M. Lamb under said sale contract set forth above. Said corporation sold said car to the said J. G. Thompson and W. M. Lamb in good faith and delivered possession of the same to them under said reservation of title contract.

C. T. & L. C. HOPKINS,
ELLIS, ELLIS & BELL,
DORSEY, SHELTON & DORSEY,
*Attorneys for J. W. Goldsmith, Jr., Grant Company, Inc., Claimant.*
J. W. HENLEY,
*Assistant United States Attorney for the Northern District of Georgia.*

*Order Allowing Statement of Facts.*

Agreement allowed and ordered filed as a part of the record in said case.
This January 16th, 1919.

WM. T. NEWMAN,
*United States Judge.*

Filed in the Clerk's office January 16th, 1919. O. C. Fuller, Clerk, By J. D. Steward, Deputy Clerk.

In the District Court of the United States for the Northern District of Georgia, Northern Division, October Term, 1918.

*Verdict.*

We the jury find the property described in the libel guilty as therein alleged.
This 16th day of January 1919.

A. H. GREENE,
*Foreman.*

27 *Judgment.*

In the District Court of the United States for the Northern Dist
of Georgia, Northern Division.

No. 557. In Rem.

THE UNITED STATES

v.

ONE HUDSON AUTOMOBILE of the Appraised Value of $800.00
J. W. Goldsmith Jr., Grant Company, Inc., a Corporati
Claimant.

The above stated cause coming on regularly for trial, and t
issues formed on the pleadings having been submitted to the Ju
for consideration under the evidence adduced to them and t
charge of the Court, and the Jury having returned a verdict findi
the property described in the libel guilty as therein charged, a
thereby having found the issues in favor of the United States:

Therefore, it is considered, ordered and adjudged by the Co
that the said automobile be and the same is hereby adjudged co
demned and forfeited to the United States for the causes in said li
set forth.

And it being made further to appear to the Court that on the 11
day of November, 1918, the said J. W. Goldsmith, Jr.-Grant Co
pany, Inc., as principal, together with J. W. Goldsmith, Jr.,
surety, did execute and deliver to the United States their bond
the sum of $250.00, conditioned that in case of the condemnati
of the said property the said J. W. Goldsmith, Jr.-Grant Co
pany, Inc., should pay to the United States all the costs and expens
of the proceedings to obtain such condemnation; and it bei
28 made further to appear to the Court that on the 11th day
November, 1918, the said J. W. Goldsmith, Jr.-Grant Co
pany, Inc., as principal, together with J. W. Goldsmith, Jr., as sur
did execute and deliver to the United States their bond in the su
of $800.00, the appraised value of said automobile, conditioned th
in case of the condemnation of said property the said J. W. Gol
smith, Jr.-Grant Company, Inc., should pay to the United Stat
the appraised value of said automobile, to wit, $800.00, as may
ordered by the Court; and it being made further to appear to t
Court that upon the execution and delivery of the aforesaid bon
the said automobile was released to the said claimant:

Therefore, it is considered, ordered and adjudged by the Co
that the United States recover of the said J. W. Goldsmith, Jr
Grant Company, Inc., as principal, and J. W. Goldsmith, Jr.,
security, the principal sum of $800.00, and the further sum of
the costs and expenses of the proceedings to obtain such condemn
tion. Execution is awarded accordingly.

In open court this January 16, 1919.

WM. T. NEWMAN,
*United States Judge.*

Filed in the Clerk's Office January 16th, 1919. O. C. Fuller, Clerk, By J. D. Steward, Deputy Clerk.

Recorded on Judgment Docket No. B Page 116, this 16th day of January 1919. O. C. Fuller, Clerk, By R. Q. Fuller, Deputy Clerk.

7 *Motion to Set Aside Verdict and Grant New Trial.*

In the District Court of the United States for the Northern District of Georgia, Northern Division, October Term, 1918.

No. 557. In Rem.

THE UNITED STATES

vs.

One Hudson Automobile; J. W. Goldsmith, Jr.-Grant Company, Inc., Claimant; J. W. Goldsmith, Jr., Surety.

Verdict and Judgment of Condemnation in Favor of United States, February —, 1919.

And now comes J. W. Goldsmith, Jr.-Grant Company, Inc., claimant and J. W. Goldsmith, Jr., surety, in the above entitled cause by C. T. & L. C. Hopkins, Bell, Ellis & Bell and Dorsey, Shelton & Dorsey, their attorneys and move the court to set aside the verdict rendered herein, and to grant a new trial and for reasons therefor show to the court the following:

1. Because the verdict is contrary to evidence and without evidence to support it.

2. Because the verdict is decidedly and strongly against the weight of evidence.

3. Because the verdict is contrary to law and the principles of justice and equity.

4. Because the court erred in overruling movant's motion to direct a verdict in their favor. The court duly allowed an exception to the ruling of said motion.

5. Because the court erred in declining the following written request made by movant to charge the jury, to-wit:

"If you should believe from the evidence that J. W. Goldsmith, Jr.-Grant Company, Inc., sold the Hudson automobile seized in this case to J. G. Thompson and W. M. Lamb under a conditional sale contract reserving title in good faith and without any knowledge or notice or reasonable ground to believe that said car might be put to any illegal use, and if you should believe that neither said corporation nor any of its officers, agents or employees participated in any way, directly or indirectly, in the illegal use to which said car was put, and if you should believe that the balance of the pur-

chase money has never been paid, and that the title vested
59 in J. W. Goldsmith, Jr.,-Grant Company, Inc., as security for the balance of the purchase money has never been divested, then I charge you that title of J. W. Goldsmith, Jr.-Grant Company, Inc., to said car could not be condemned in this proceeding, and that only the interest or equity if any of said J. G. Thompson and W. M. Lamb could be condemned."

The court duly allowed an exception to said ruling.

6. The court erred in directing a verdict in favor of the United States and instructing the jury that under the evidence they must return a verdict against these movants and condemning their right title and equity in said automobile. Said ruling is contrary to law. The court allowed an exception to this ruling as shown by the record.

7. Because the court erred in failing to hold that §3450 of the revised statutes in violation of the following provision of the amendment known as Article 5 of the Articles in addition to an amendment of the Constitution of the United States, to-wit:

"No person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation." Movants contend and ask the court to hold said act to be unconstitutional in that it seeks to condemn property irrespective of the guilt or innocence of the owner in connection with its illegal use, and although the owner in no way consented to or participated in the illegal use of his property by another. The undisputed evidence shows that claimant J. W. Goldsmith, Jr.-Grant Company, Inc., owned said property, and had no notice or knowledge of the illegal use of it by the person who was illegally using it at the time it was seized. The court allowed an exception to this ruling as shown by the record.

8. Because the court erred in refusing to construe §3450 of the revised statutes to mean that only the right, title and interest
31 of J. G. Thompson and W. M. Lamb could be condemned. Movants contend that said act should not be construed to authorize the condemnation of the right, title and interest of J. W. Goldsmith, Jr.-Grant Company, Inc., Claimant.

Wherefore: Movants pray that these their grounds for a new trial be inquired of by the court, and that a new trial be granted upon each and every ground of the foregoing motion.

C. T. & L. C. HOPKINS,
BELL, ELLIS & BELL,
HODSEY, SHELTON & HODSEY,
*Attorneys for Movants.*

*Order to Show Cause and Supersedas.*

Read and considered. The recitals of fact contained in the foregoing motion for a new trial are hereby approved as true and correct and it is ordered that said motion be filed and made a part of the record.

It is further ordered that Hooper Alexander, United States Attorney, shows cause before me at Atlanta, Georgia, at 10 o'clock A. M. on the 15 day of March, 1919, or at such other time as said motion may be heard why the foregoing motion should not be granted, the case being postponed until the next term.

It is further ordered that movants have until the actual hearing of this motion, whether in term or vacation, to prepare and present for approval and filing brief of evidence herein and an amendment to this motion, and that this order act as a supersedas of the verdict, judgment and other proceedings in said case until the further order of court.

This 18 day of February, 1919.

WM. T. NEWMAN,
*United States Judge.*

Filed in the Clerk's office February 18th, 1919. O. C. Fuller, Clerk, by G. R. Hood, Deputy Clerk.

32 Service acknowledged, copy received. All other and further service and notice waived. It is agreed that said motion for a new trial shall be continued until the final disposition of the case of the United States against one Ford automobile, Wisdom and Strickland claimants, In Rem tried at this term of court, in which the same questions are involved.

This February —, 1919.

HOOPER ALEXANDER,
*United States Attorney.*

Filed in the Clerk's office February 28th, 1919. O. C. Fuller, Clerk, by G. R. Hood, Deputy Clerk.

33 *Amended Motion for New Trial.*

In the District Court of the United States for the Northern District of Georgia, Northern Division, October Term, 1918.

No. 557. In Rem.

THE UNITED STATES

vs.

ONE HUDSON AUTOMOBILE; J. W. GOLDSMITH, JR.-GRANT COMPANY, INC., Claimant.

Movant, J. W. Goldsmith, Jr.-Grant Company, Inc., comes and amends its motion for a new trial filed in the above stated case and prays that a new trial may be grated on the following additional grounds:

9. After the submission to the jury of the agreed statement of facts, and the evidence had been closed, movant moved the court

to construe Section 3450 of the Revised Statutes, under which these proceedings were instituted to mean that only the interest of the wrongdoer could be forfeited thereunder, and not the interest of an innocent owner who had been guilty of no negligence and who had not participated directly or indirectly in the wrongful act.

The court overruled this motion and an exception was allowed.

Movant avers that the overruling of this motion was error, that the construction of 3450 contended for is its true construction and that this error of the court requires a new trial.

10. After the submission to the jury of the agreed statement of facts and the evidence had been closed and the court having ruled that the construction of Revised Statutes 3450 was not as movant had contended for as set out in ground 9 hereof, movant moved the court to hold Revised Statute 3450 as so construed by the court to be unconstitutional as violative of the following provision of *Article* 5 of Article 8 of the United States Constitution.

"No person shall be deprived of life, liberty or property without due process of law."

34 Movant contended to the Court that said Section, as so construed by the Court, in so far as it provided for the forfeiture of the title of an innocent owner who was without negligence and without any participation in the wrongful act deprived movant of its property without due process of law.

The Court declined so to hold Revised Statutes 3450 unconstitutional, and an exception was allowed.

Movant avers that the overruling of this motion was error, that Section 3450 Revised Statutes is unconstitutional as construed by the Court and this error of the Court requires a new trial.

Wherefore, movant prays that this amendment may be allowed and filed and a new trial granted on each of the grounds of the original motion and of this amendment.

BELL & ELLIS,
DORSEY, SHELTON & DORSEY,
C. T., L. C. & J. L. HOPKINS,
*Attorneys for Movant.*

*Order.*

Amendment allowed and ordered filed as part of the record. The recitals of fact contained therein are approved as true and correct.

This November 22nd, 1919. WM. T. NEWMAN,
*United States Judge.*

Service acknowledged. Copy received this November 22nd, 1919.
HOOPER ALEXANDER,
*United States Attorney.*

Filed in open Court November 22nd, 1919. O. C. Fuller, Clerk, By J. C. Boone, Deputy Clerk.

35 *Order Overruling Motion for New Trial and Making Judgment of January 16, 1917, Absolute.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

No. 557. In Rem.

UNITED STATES OF AMERICA

vs.

ONE HUDSON AUTOMOBILE; J. W. GOLDSMITH, JR.-GRANT COMPANY, INC., Claimant.

A jury having rendered on January 16, 1919, the following verdict in this case:

"We the jury find the property described in the libel guilty as therein alleged. A. H. Greene, Foreman."

And on the same day the court having entered the following judgment:

"The above stated cause coming on regularly for trial, and the issues formed on the pleadings having been submitted to the jury for consideration under the evidence adduced to them and the charge of the court, and the jury having returned a verdict finding the property described in the libel guilty as therein charged, and thereby having found the issue in favor of the United States:

"Therefore, it is considered, ordered and adjudged by the court that the said automobile be and the same is hereby adjudged condemned and forfeited to the United States for the causes in said libel set forth.

"And it being made further to appear to the court that on the 11th day of November, 1918, the said J. W. GGoldsmith, Jr.,-Grant Company, Inc., as principal, together with J. W. Goldsmith, Jr., as surety, did execute and deliver to the United States their bond in the sum of $250.00, conditioned that in case of the condemnation of the said property the said J. W. Goldsmith, Jr.,-Grant Company, Inc., should pay to the United States all the costs and expenses of the proceedings to obtain such condemnation; and it being made further to appear to the court that on the 11th day of November, 1918, the said J. W. Goldsmith, Jr.,-Grant Company, Inc., as principal,
35 together with J. W. Goldsmith, Jr., as surety, did execute and deliver to the United States their bond in the sum of $800.00, the appraised value of said automobile, conditioned that in case of the condemnation of said property the said J. W. Goldsmith, Jr.,-Grant Company, Inc., should pay to the United States the appraised value of said automobile, to-wit, $800.00, as may be ordered by the court; and it being made further to appear to the court that upon

the execution and delivery of the aforesaid bonds the said automobile was released to the said claimant.

"Therefore, it is considered, ordered and adjudged by the court that the United States recover of the said J. W. Goldsmith, Jr., Grant Company, Inc., as principal and J. W. Goldsmith, Jr., as security, the principal sum $800.00, and the further sum of —, the costs and expenses of the proceedings to obtain such condemnation. Execution is awarded accordingly.

"In open court this January 16, 1919.

"WM. T. NEWMAN,
*"United States Judge."*

*Order.*

And the claimants at the same term of the court at which said verdict and judgment were rendered and entered to-wit, on February 18, 1919, having presented their motion to set aside the verdict and judgment so rendered and grant a new trial, which motion was by order of this court on February 18, 1919, duly ordered filed, it being embraced in that order that it was to act as a supersedeas of said verdict, judgment and other proceedings until the further order of this court.

And the cause having now been heard on the motion of the claimants to set aside the verdict and the judgment and to grant a new trial; after argument of the respective parties,

It is now considered, ordered and adjudged by the court that said motion be and it is hereby overruled and denied.

It is further ordered that said judgment of January 16, 1919, hereinabove set out be and it is hereby reentered and made final and absolute.

This December 12, 1919.

37 WM. T. NEWMAN,
*United States Judge.*

Filed in the Clerk's Office, December 12, 1919. O. C. Fuller, Clerk.

38 *Petition for Writ of Error.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

No. 557. In Rem.

UNITED STATES OF AMERICA

vs.

ONE HUDSON AUTOMOBILE; J. W. GOLDSMITH, JR.-GRANT COMPANY, Claimants.

Verdict and Judgment for Plaintiff.

To the Honorable William T. Newman, Judge of said Court:

Now come J. W. Goldsmith, Jr.-Grant Company, claimants in the above stated case, (now plaintiffs in error,) and represent that on December 12, 1919, a final judgment was duly entered by said court in favor of the United States and against claimants.

This was an action for the forfeiture of a certain automobile, it having been seized with whiskey therein being transported without the tax thereon having been paid.

Claimants asserted title to said automobile and innocence of any wrong-doing, negligence or participation in the crime, and further asserted that Revised Statutes 3450, under which the seizure was attempted to be had, was violative of *Article 5* of Article 8 of the Constitution of the United States, also known as Article 5 of the Articles in addition to and amendment of the Constitution of the United States in so far as it provided for the forfeiture of the title of claimants in this case. Said Article of the United States Constitution providing that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.

Claimants aver that in their answer filed November 27th, 1918 they expressly charged that U. S. R. S. 3450 was unconstitutional in the above respect. They also charged it in the amended answer of claimants filed January 16th, 1919. On the trial before the jury January 16th, 1919 they moved the court to direct a verdict in their favor on the undisputed evidence because R. S. 3450 was un-

39 constitutional in the particular stated. In the original motion to set aside the verdict and judgment and grant a new trial, which was filed February 18th, 1919 they made this constitutional question one of the grounds of the motion and insisted on it in the amended motion to set aside the verdict and judgment and grant a new trial which was filed November 22nd, 1919.

On each presentation of the question the court decided against claimant's position and held R. S. 3450 constitutional.

Claimants also say that in the charge of the court, in the direction

of the court of a verdict for plaintiff and in the failure of the court to charge as requested by claimants, there were certain errors committed to injury of claimants, who propose now to become plaintiffs-in-error, and all of which will more particularly appear from the record in the cause and from the assignments of error filed with this petition.

Claimants (petitioners) aver that the judgment, decision and interpretation of said Act of Congress known as R. S. 3450 were and are repugnant to the above stated Article of the Constitution of the United States and of the laws thereof.

On December 12, 1919 the court entered a final judgment against claimants in said cause; and claimants (petitioners) feeling themselves aggrieved by said judgment now pray that a writ of error may be allowed to them from the Supreme Court of the United States to the District Court of the United States for the Northern District of Georgia, for the correction of the errors so complained of, and that a transcript of the record, proceedings, and papers in said cause duly authenticated may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as may be proper in the premises.

Petitioners herewith present with this petition their assignment of errors.

40 Petitioners further pray that an order of supersedeas may be entered herein pending the final disposition of the cause, and that the amount of security may be fixed by the order allowing the writ of error.

C. T., I. C. & J. L. HOPKINS,
DORSEY, SHELTON & DORSEY,
BELL & ELLIS,
*Attorneys for J. W. Goldsmith, Jr.-Grant Company, now Plaintiffs-in-Error.*

Filed in the Clerk's office December 12th, 1919. O. C. Fuller, Clerk.

41 *Order Allowing Writ of Error.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

357. In Rem.

UNITED STATES OF AMERICA
vs.
ONE HUDSON AUTOMOBILE; J. W. GOLDSMITH, JR.-GRANT COMPANY, Claimants.

Verdict and Judgment for Plaintiff.

On reading the petition of J. W. Goldsmith, Jr.-Grant Company for writ of error and the assignment of errors, and upon due consideration of the record of said cause,

It is ordered that a writ of error be allowed from the Supreme Court of the United States to the District Court of the United States for the Northern District of Georgia as prayed for in said petition, and that said writ of error and citation thereon be issued, served and returned to the Supreme Court of the United States in accordance with law, upon condition that the said J. W. Goldsmith, Jr.-Grant Company give security in the sum of $500.00 that the said plaintiff in error shall prosecute said writ of error to effect, and if said plaintiff in error fail to make its plea good shall answer to the defendant in error for all the costs and damages that may be adjudged or decreed on account of said writ of error.

On consideration whereof, it appearing that said petition is within the period allowed by law, it is ordered that the writ of error be allowed as prayed for, and the said plaintiffs in error now presenting a bond in the penal sum above mentioned, with American Surety Company of New York as surety, it is ordered that the same be and it is hereby approved.

In witness whereof I have hereunto set my hand this December 12th, 1919.

WM. T. NEWMAN,
*Judge of the District Court of the United States for the Northern District of Georgia.*

Filed in the Clerk's Office, December 12, 1919. O. C. Fuller, Clerk.

2

*Assignments of Error.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

557. In Rem.

UNITED STATES OF AMERICA

vs.

ONE HUDSON AUTOMOBILE; J. W. GOLDSMITH, JR.-GRANT COMPANY, Claimants.

Verdict and Judgment for Plaintiff.

J. W. Gold-smith, Jr.-Grant Company, claimants in the above entitled cause, (now plaintiffs in error) proposing now to petition for a writ of error to remove the cause for review into the Supreme Court of the United States, come now in connection with said petition for writ of error, and assign the following errors in the rulings, decisions and judgments of the District Court of said matter which they aver occurred as stated, and on which errors they rely to reverse said rulings, decisions and judgments complained of:

1st Assignment.

The case was tried on an agreed statement of facts. No other evidence was introduced. This showed that the automobile was seized while being used by J. G. Thompson to transport and conceal fifty gallons of unstamped spirituous liquors with intent to defraud the United States; that the fee simple title to said car had been and still was in J. W. Goldsmith, Jr.,-Grant Company; that prior to the seizure they had sold said car to said Thompson and W. M. Lamb, Thompson's occupation being a taxicab operator and Lamb's occupation being newspaper business. The sale being made under contract of conditional sale duly recorded under the laws of Georgia, and re-
serving title in J .W. Goldsmith, Jr.,-Grant Company, and
43 that th balance of purchase money, which was the only condition under which the title of J. W. Goldsmith,Jr.,-Grant Company could be divested, had never been paid.

That the illegal use and the violation of the law by Thompson was without the knowledge or consent of J. W. Goldsmith, Jr.,-Grant Company; that at no time had they any knowledge or notice or reason to suspect the illegal use of said car, did not participate in same directly or indirectly, and had sold the car in good faith and delivered possession, and from the time of the sale had nothing to do with the operation of the car or how it was to be used.

J. W. Goldsmith, Jr.,-Grant Company requested the court to charge, in effect, that under these facts the title of J. W. Goldsmith, Jr.,-Grant Company could not be forfeited but only the interest of Thompson, if any. The court declined this request; and that ruling is the first assignment of error. The court erred in declining this request.

2nd Assignment.

When the agreed statement of facts was presented, J. W. Goldsmith, Jr.,-Grant Company moved the court to direct a verdict in their behalf on the ground that U. S. R. S. 3450 under which the forfeiture was attempted to be had was unconstitutional and violative of Article 5 of Article 8 of the United States Constitution, also known as Article 5 of the Articles to and Amendment of the Constitution of the United States providing that no person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation.

The court declined to direct the verdict as moved and declined to hold the statute in question unconstitutional.

This is the second assignment of error. The court erred in declining to direct a verdict for claimants.

44 3rd Assignment.

J. W. Goldsmith, Jr.,-Grant Company then moved the court in writing as required by the laws of Georgia and the practice in said court, to charge the jury as follows:

"If you should believe from the evidence that J. W. Goldsmith, Jr.-Grant Company Inc., sold the Hundson automobile seized in this case to J. G. Thompson and W. M. Lamb under a conditional sale contract reserving title in good faith and without any knowledge or notice or reasonable ground to believe that said car might be put to any illegal use, and if you should believe that neither said corporation nor any of its officers, agents or employees participated in any way, directly or indirectly, in the illegal use to which said car was put, and if you should believe that the balance of the purchase money had never been paid, and that the title reserved by J. W. Goldsmith, Jr.-Grant Company Inc., as security for the balance of the purchase money has never been divested, then I charge you that title to J. W. Goldsmith, Jr.-Grant Company, Inc., to said car could not be condemned in this proceeding, and that only the interest or equity if any of said J. G. Thompson and W. M. Lamb could be condemned."

The court declined so to charge.

This is the third assignment of error. The court erred in declining this request to charge.

4th Assignment.

The court then charged the jury as follows:

"Gentlemen of the Jury, I am compelled to instruct you, under a recent decision of our Circuit Court of Appeals that under the facts stated here and under the situation it was, this property is guilty and ought to be so found, and you will find it guilty notwithstanding what is in the record. The jury can find a verdict."

J. W. Goldsmith, Jr.-Grant Company assign error on this action of the court as their fourth assignment of error.

The court erred in this charge.

45

5th Assignment.

When the jury returned their verdict under the foregoing instruction of the court and the verdict was received and published, the court entered a judgment thereon in conformity with said verdict on January 16th, 1919. J. W. Goldsmith, Jr.-Grant Company assign error on the entry of this judgment as their fifth assignment of errors. The Court erred in entering this judgment.

6th Assignment.

A motion for a new trial and to set aside said verdict and judgment being duly filed within the term as required by the practice in said court, which motion being duly amended later came on to be heard upon the question as to whether the motion should be granted and the verdict and judgment should be set aside or whether said judgment should be made absolute, and after duly considering same and hearing argument thereon, the court on December 12, 1919, entered an order overruling the motion, refusing to set aside the verdict and

judgment of January 16th, 1919, and making said judgment final and absolute.

J. W. Goldsmith, Jr.-Grant Company assign error on this action of the court as their sixth assignment of error. The court erred in overruling this motion and in making the judgment final and absolute.

Upon the entry of each and every ruling referred to in the foregoing assignment of errors an exception was duly asked for, allowed and entered.

Wherefore J. W. Goldsmith, Jr.-Grant Company present this their assignment of errors, and pray that said errors may be corrected and that the judgment of the District Court may be reversed, and that the cause be retried or other appropriate action had in the premises.

C. T., L. C. & J. L. HOPKINS,
DORSEY, SHELTON & DORSEY,
BELL & ELLIS,
*Attorneys for J. W. Goldsmith, Jr.-Grant Company, Now Plaintiff-in-Error.*

Filed in the Clerk's Office December 12, 1919. O. C. Fuller, Clerk.

46 *Bill of Exceptions.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

No. 357. In Rem.

UNITED STATES OF AMERICA

vs.

ONE HUDSON AUTOMOBILE; J. W. GOLDSMITH, JR.-GRANT COMPANY, Claimants.

*Verdict and Judgment for Plaintiff.*

Be it remembered that on the 16th day of January, 1919, the above entitled cause came on to be heard in said court before the Honorable William T. Newman, District Judge, presiding, and a jury duly empaneled. Hooper Alexander, Esq., U. S. Attorney, and his assistant John W. Henley, appeared for the plaintiff, and Dorsey, Shelton & Dorsey, Bell & Ellis and C. T., L. C. & J. L. Hopkins appeared for the claimants, J. W. Goldsmith, Jr.-Grant Company.

The only evidence introduced was the agreed statement of facts, which the court ordered filed as a part of the record. This showed that J. W. Goldsmith, Jr.-Grant Company was a corporation engaged in the business of selling automobiles; and on October 11th, 1918, while owners in fee simple of the automobile seized in this case, sold same to J. G. Thompson, a taxicab operator, and W. M. Lamb, engaged in the newspaper business, under a condition sales contract

in which title was reserved in sellers until the purchase money should be fully paid.

That the reserved title had never passed to Thompson and Lamb because $650.00 of the purchase money was still unpaid at the time of the seizure.

The contract of conditional sale was duly recorded in the clerk's office of the Superior Court of Fulton County, Georgia, on October 15th, 1918, as required by Georgia law.

That on October 15th, 1918, the automobile was used by Thompson in the removal of fifty gallons of spirituous liquors with the intent on Thompson's part to defraud the United States of the tax thereon, which had not been paid.

47 That the use of the automobile was without the knowledge or consent of J. W. Gold-smith, Jr.-Grant Company or any of its officers or employees. That they never at any time had any knowledge or notice or reason to suspect that said automobile was to be put, or was being put, to any illegal use until they received notice of the seizure by the United States authorities. No officer or employee of the corporation participated in said illegal use, directly or indirectly. The corporation delivered the possession of the automobile to Thompson and Lamb under the sale contract and sold said car in good faith and delivered possession of same to Thompson and Lamb under the said retention of title contract.

Claimant moved the court, before the jury was charged, to direct a verdict in their behalf on the ground that U. S. R. S. 3450 under which the forfeiture was attempted to be had, was unconstitutional and violative of Article 5 of Article 8 of the Constitution of the United States, also known as Article 5 of the Articles in Addition to an Amendment of said Constitution, to wit:

"No person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation."

That the agreed statement of facts showed that claimants had not participated in the unlawful act, and to allow their title to be forfeited would be to deprive them of their property without due process of law.

Claimants further moved the court to direct a verdict in their favor on the ground that U. S. R. S. 3450 was not to be construed to give the United States a right to forfeit the title of a third party entirely innocent of all wrongdoing, who did not participate in the wrongful act, and who at the time he consented to the possession of the automobile by the party who afterwards became the wrongdoer, had no reason to believe that it was likely to be put to any illegal use. That the proper construction of the U. S. R. S. 3450 was that it contemplated forfeiting only the interest or title

48 of the wrongdoer.

The court overruled the motion to direct a verdict in the claimant's favor on each and every ground urged thereto. Claimants now aver that the court erred in this ruling.

An exception was duly asked and allowed by the court.

Claimants then requested the court to charge the jury as follows:

"If you should believe from the evidence that J. W. Goldsmith Jr.-Grant Company, Inc., sold the Hudson automobile seized in this case to J. G. Thompson and W. M. Land under a conditional sale contract reserving title in good faith and without any knowledge or notice or reasonable ground to believe that said car might be put to any illegal use, and if you should believe that neither said corporation nor any of its officers, agents or employees participated in any way, directly or indirectly, in the illegal use to which said car was put, and if you should believe that the balance of the purchase money has never been paid and that the title reserved by J. W. Goldsmith, Jr.-Grant Company Inc., as security for the balance of the purchase money has never been divested, then I charge you title of J. W. Goldsmith, Jr.-Grant Company, Inc., to said car could not be condemned in this proceeding, and that only the interest or equity if any of said J. G. Thompson and W. M. Land could be condemned."

Before the jury retired, this request to charge was presented in writing as required by the practice in said court.

The court declined to charge as requested. Claimants now aver that the court erred in this ruling.

An exception was asked before the jury retired and duly allowed by the court.

The court then charged the jury as follows:

49 "Gentlemen of the jury, I am compelled to instruct you, under a recent decision of our Circuit Court of Appeals, that under the facts stated here and under the situation it was, this property is guilty and ought to be so found. And you will find it guilty notwithstanding what is in the record. The jury can find a verdict."

Before the jury retired, claimants requested that an exception to this charge be noted, which was allowed. Claimants now aver that the court erred in this charge.

When the jury had returned the verdict which had been directed by the court, the same was received and filed and the judgment of the court was entered thereon. This judgment being set out in extenso as a part of the record. An exception was requested and allowed. Claimants aver that the court erred in entering said judgment.

Claimants within the term and within the time allowed by law, to wit on February 18th, 1919, duly filed their motion to set aside the verdict and judgment rendered on February 16th, 1919, and to grant a new trial therein. This motion was ordered filed by the court as a part of the record, and in the order it was provided that the motion should act as a supersedeas of the verdict and judgment and other proceedings until the further order of the court.

On November 22nd, 1919, this motion was duly amended and came on for a hearing, and on December 12, 1919, the court entered an order which is set out in extenso as a part of the record overruling the motion, refusing to set aside the verdict and judgment and making the judgment of January 16th, 1919, final and absolute.

An exception was requested and duly allowed by the court. Claim-

ants aver that the court erred in overruling the motion to set aside the verdict and judgment of January 16th, 1919, and to grant a new trial in said cause, and also erred in making final and absolute the judgment of January 16th, 1919.

The verdict in said cause was final and the judgment which was entered therein in December, 1919, was and is final and each and all of the rulings hereinabove complained of were and are final in said cause.

Wherefore J. W. Goldsmith, Jr., Grant Company here tender this their bill of exceptions to the court to the end that the matters above set out and the rulings of the court as to the matters hereinabove specified may be made matters of record and part of the record in the case, and pray that this their bill of exceptions may be settled and allowed and signed and certified by the judge as provided by law, to the end that the errors complained of may be considered and corrected.

C. T., L. C. & J. L. HOPKINS,
DORSEY, SHELTON & DORSEY,
BELL & ELLIS,
*Attorneys for J. W. Goldsmith, Jr., Grant Company, Plaintiffs-in-Error.*

*Order Allowing Bill of Exceptions.*

I hereby certify that the recitals of facts stated in the foregoing bill of exceptions are true, and that it contains the substance of all the testimony given on the trial and all the evidence affecting the matters to which the exceptions relate, and the same is hereby settled, allowed and ordered filed as the bill of exceptions in this case.

Witness my hand this December 12, 1919.

WM. T. NEWMAN,
*United States Judge.*

Service of the within bill of exceptions and the above order acknowledged this December 12, 1919.

HOOPER ALEXANDER,
*U. S. Attorney.*

Filed in the Clerk's Office December 12th, 1919. O. C. Feller, Clerk.

31 *Acknowledgment of Service.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

No. 557. In Rem.

UNITED STATES OF AMERICA

vs.

ONE HUDSON AUTOMOBILE; J. W. GOLDSMITH JR.-GRANT COMPANY, Claimants.

*Verdict and Judgment for Plaintiff.*

Due and legal service of the petition for writ of error, the order allowing the writ of error and the writ of error is acknowledged. Copies received. All other and further service and notice waived.

This December 12, 1919.

HOOPER ALEXANDER,
*U. S. Attorney.*

Filed in the Clerk's Office December 12th, 1919. Geo. C. Fuller, Clerk.

32 *Praecipe for Record.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

No. 557. In Rem.

UNITED STATES OF AMERICA

vs.

ONE HUDSON AUTOMOBILE; J. W. GOLDSMITH JR.-GRANT COMPANY, Claimants.

*Verdict and Judgment for Plaintiff.*

Now come J. W. Goldsmith, Jr.-Grant Company, plaintiff-in-error in the above entitled cause, and within five days from the issuance of the writ of error, designate the following as parts of the record in the cause which they think necessary for the consideration of the errors complained of, to-wit:

(1) The original filed in the cause, the same being Information 557 In Rem, filed October 29th, 1918.

(2) The intervention of J. W. Goldsmith, Jr.-Grant Company, filed November 12th, 1918, with the exhibit thereto attached and the order of court thereon.

(5) The claim affidavit and bond, filed November 12th, 1918.

(6) The bond for the release of the seized property, filed November 12th, 1918.

(7) The answer of claimants, filed November 27th, 1918.

(8) The amendment to claimants' answer, filed January 16th, 1919, with the order of the court allowing same.

(9) The agreed statement of facts and order allowing same.

(10) The verdict of the jury rendered January 16th, 1919.

(11) The judgment of the court entered on the verdict January 16th, 1919, and signed by the court.

(12) The motion to set aside the verdict and judgment and grant a new trial, filed February 18th, 1919, with order of the court thereon and acknowledgment of service.

(13) The amendment to the motion for new trial and to set aside the verdict and judgment, filed November 22nd, 1919, with the order of the court allowing same.

(14) The final judgment of December 12, 1919, overruling the motion for new trial and to set aside the verdict and judgment of January 16th, 1919, and making the judgment of January 16th, absolute.

(15) The petition for writ of error, filed December 12th, 1919.

(16) The order allowing the writ of error, filed December 12, 1919.

(17) The assignment of error, filed December 12, 1919.

(18) The bill of exceptions, with the certificate and order of the court and acknowledgment of service thereon.

(19) Acknowledgment of Service of Hooper Alexander of petition for writ of error, order allowing same, and writ of error.

(20) This praecipe of record to be sent up, and acknowledgment of service thereon.

(21) Bond.

C. T. L. C. & J. L. HOPKINS,
HORSEY, SHELTON & HORSEY,
BELL & ELLIS,
*Attorneys for J. W. Goldsmith, Jr.-Grant Company, Plaintiffs-in-Error.*

Service acknowledged and copy received. This December 12, 1919.

HOOPER ALEXANDER,
*U. S. Attorney.*

Filed in the Clerk's office December 12, 1919. O. C. Fuller, Clerk.

54 *Cost Bond on Writ of Error.*

In the District Court of the United States for the Northern District of Georgia, Northern Division.

No. 557. In Rem.

UNITED STATES OF AMERICA

vs.

ONE HUDSON AUTOMOBILE; J. W. GOLDSMITH, JR.-GRANT COMPANY, Claimant.

*Verdict and Judgment for Plaintiff.*

KNOW all Men by these Presents: That we, J. W. Goldsmith, Jr.-Grant Company as principal, and American Surety Company of New York as surety, are held and firmly bound unto the United States in the full and just sum of $500.00 to be paid to the United States, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents. Sealed with our seals and dated this December 12, 1919.

Whereas lately at a hearing in the suit between the parties in the above stated case a verdict and judgment was rendered against J. W. Goldsmith, Jr.-Grant Company, claimants, and the said claimants having obtained a writ of error to review the ruling in the aforesaid suit.

Now, therefore, the condition of the above obligation is such that if the said J. W. Goldsmith, Jr.-Grant Company shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and effect.

J. W. GOLDSMITH, JR.-GRANT COMPANY.

[SEAL.] By J. W. GOLDSMITH, JR., [SEAL.]
*Prest., Principal.*

AMERICAN SURETY COMPANY OF NEW YORK.
*Surety.*

[SEAL.] By H. N. HUTCHINSON, [SEAL.]
*Resident Vice President.*

Attest:
TILLON FORBES. [SEAL.]
*Resident Ass't Secretary.*

Approved December 12, 1919.

WM. T. NEWMAN.
*U. S. District Judge for the Northern District of Georgia.*

Filed in the Clerk's Office December 12, 1919. O. C. Fuller, Clerk.

55 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of the District Court of the United States for the Northern District of Georgia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America, plaintiff, & one Hudson automobile, J. W. Goldsmith Jr.-Grant Co., claimants, a manifest error hath happened, to the great damage of the said J. W. Goldsmith, Jr.-Grant Co., as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 12th day of December, in the year of our Lord one thousand nine hundred and nineteen.

[Seal U. S. District Court, N. D. Georgia.]

O. C. FULLER,
*Clerk United States District Court,*
*Northern District of Georgia.*

Allowed by
WM. T. NEWMAN,
*United States District Judge for the*
*Northern District of Georgia.*

[Stamped:] U. S. District Court. Filed in Clerks Office, Dec. 12, 1919. O. C. Fuller, Clerk.

[Endorsed:] No. 557 In rem. In the District Court of the United States for the Northern District of Georgia. The United States of America vs. One Hudson Automobile, J. W. Goldsmith, Jr.-Grant Co., Claimants. Writ of Error. U. S. District Court. Filed in Clerk's Office, Dec. 12, 1919. O. C. Fuller, Clerk.

56 UNITED STATES OF AMERICA, ss:

To the United States of America and its Attorney of Record, Hon. Hooper Alexander, United States District Attorney for the Northern District of Georgia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the United States District Court of the Northern District of Georgia wherein J. W. Goldsmith, Jr.,-Grant Co. are plaintiffs in error and the United States of America *are* defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 12 day of December, in the year of our Lord one thousand nine hundred and nineteen.

[Seal U. S. District Court, N. D. Georgia.]

WM. T. NEWMAN,
*United States District Judge,*
*Northern District of Georgia.*

On this 12th day of December, in the year of our Lord one thousand nine hundred and nineteen, personally appeared L. C. Hopkins before me, the subscriber, and makes oath that he is one of counsel for plaintiffs in error and that he delivered a true copy of the within citation to Hon. Hooper Alexander, U. S. District Attorney for the Northern District of Georgia, personally, on Dec. 12, 1919.

L. C. HOPKINS.

Sworn to and subscribed the 12th day of December, A. D. 1919.

O. C. FULLER,
*Clerk United States District Court,*
*Northern District of Georgia.*

Service of a copy of the foregoing citation acknowledged. All other and further service and notice waived. This Dec. 15th, 1919.

ALEX. C. KING,
*Solicitor-General.*

[Endorsed:] No. 557. In Rem. In the District Court of the United States for the Northern District of Georgia. The United States of America vs. One Hudson Automobile, J. W. Goldsmith, Jr.,-Grant Co., Claimants. Citation on Writ of Error. U. S. District Court. Filed in Clerk's Office, Dec. 12, 1919. O. C. Fuller, Clerk

57 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
*Northern District of Georgia,*
*Northern Division:*

I, Olin C. Fuller, Clerk of the District Court of the United States in and for the Northern District of Georgia, do hereby certify that the foregoing and attached 56 pages of printing and writing contains a true copy of the original Record, Bill of Exceptions, Assignment of error and all proceedings, as stipulated by counsel, in the case of one Hudson automobile, motor number 156,224, of the appraised value of $800; J. W. Goldsmith, Jr.,-Grant Company, Inc., Plaintiff in Error, versus The United States of America, Defendant in Error, as fully as the same remains of record and on file in my office, except that the original Citation with Acknowledgment of Service thereon and the original Writ of Error are included therein in the stead of a copy.

In testimony whereof, I hereunto set my hand and the seal of the said District Court, at the City of Atlanta, Georgia, this 17th day of December, A. D., 1919.

[Seal U. S. District Court, N. D. Georgia.]

OLIN C. FULLER,
*Clerk United States District Court,*
*Northern District of Georgia.*

Endorsed on cover: File No. 27,407. N. Georgia D. C. U. S. Term No. 652. J. W. Goldsmith, Jr.,-Grant Company, plaintiff in error, vs. The United States of America. Filed December 30th, 1919. File No. 27,407.

No. 214.

# In the Supreme Court of the United States.

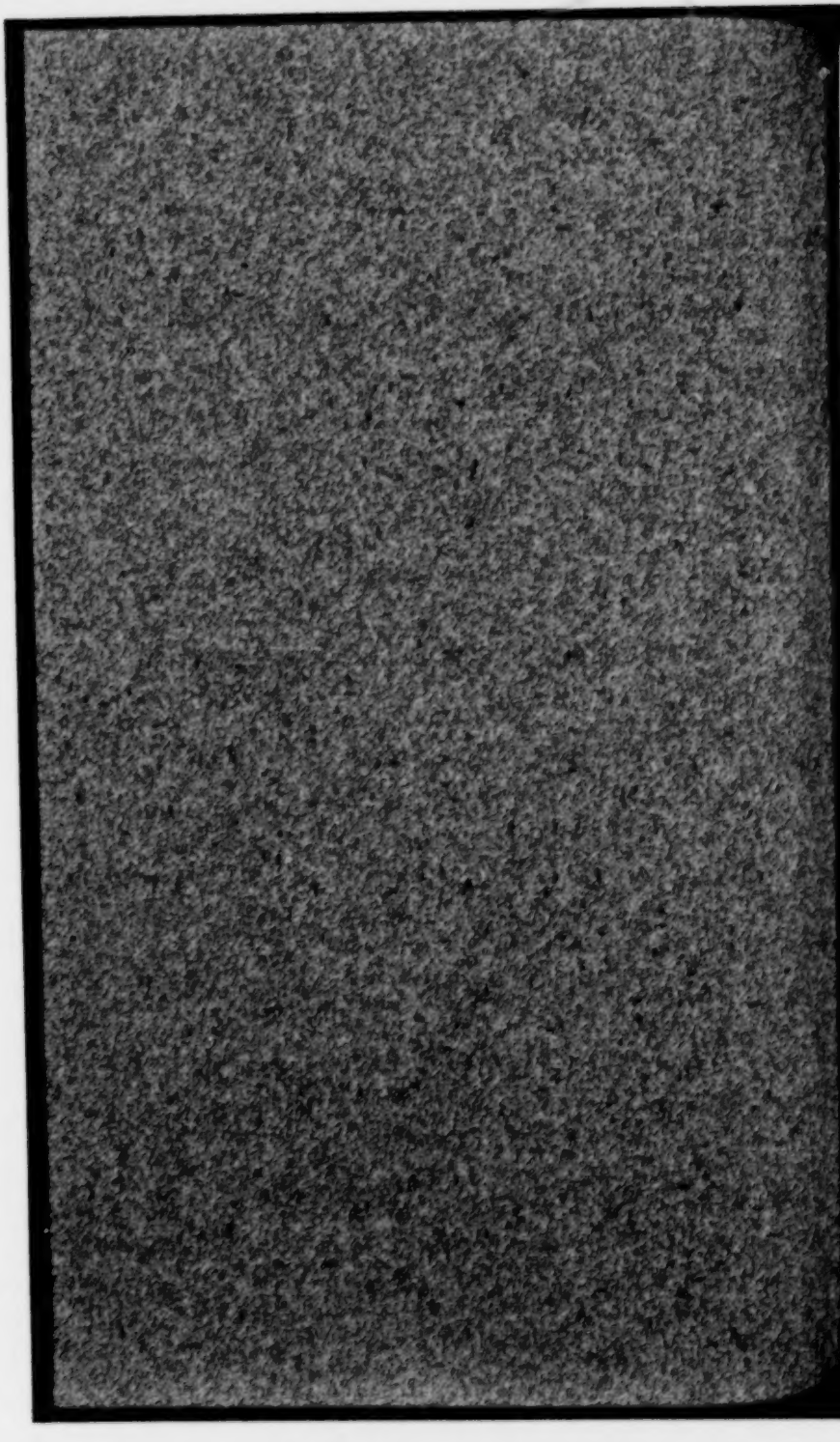
OCTOBER TERM, 1930.

J. W. GOLDSMITH, JR.—GRANT COMPANY,
PLAINTIFF IN ERROR,
v.
THE UNITED STATES OF AMERICA.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.*

MOTION TO ADVANCE.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1930



# In the Supreme Court of the United States.

OCTOBER TERM, 1920.

J. W. GOLDSMITH, JR.—GRANT COMPANY,
Plaintiff in Error,
*v.*
THE UNITED STATES OF AMERICA.
No. 214.

*IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.*

## MOTION TO ADVANCE.

Comes now the Solicitor General and moves the court to advance this case for hearing.

The case involves the constitutionality of section 3450 of the Revised Statutes, providing, among other things, for the forfeiture of any conveyance used in the removal or for the deposit and concealment of intoxicating liquors in respect whereof any tax is imposed and has not been paid with intent to defraud the United States of such tax, as applied to the case of one who has an equitable interest in or title to a vehicle used by another in contravention of this statute. It is of great importance that an early decision of this case be had, for the reason that a

large number of cases depending on it are pending in the lower court.

Respectfully,

WILLIAM L. FRIERSON,
*Solicitor General.*

OCTOBER, 1920.

O

# Supreme Court of the United States

OCTOBER TERM, 1919.

No. 214

J. W. GOLDSMITH, JR.-GRANT CO.
Plaintiff-in-Error

vs.

THE UNITED STATES OF AMERICA
Defendant-in-Error

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

## BRIEF FOR PLAINTIFF IN ERROR

BELL & ELLIS
C. T., L. C., & J. L. HOPKINS
DORSEY, SHELTON & DORSEY
Attorneys for Plaintiff in Error

# Supreme Court of the United States

OCTOBER TERM, 1919.

No. 652

J. W. GOLDSMITH, JR.-GRANT CO.
Plaintiff-in-Error

vs.

THE UNITED STATES OF AMERICA
Defendant-in-Error

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

## BRIEF FOR PLAINTIFF IN ERROR

BELL & ELLIS
C. T., L. C., & J. L. HOPKINS
DORSEY, SHELTON & DORSEY
Attorneys for Plaintiff in Error

# INDEX

# CASES CITED

## STATEMENT OF THE CASE.

Plaintiff-in-error, dealer in automobiles, owner of the car involved in this case, on October 11, 1918, sold same under a retention-title contract to Thompson and Lamb. Thompson was engaged in the taxicab business, Lamb in the newspaper business. Under the sale contract, fee simple title was to remain in plaintiff-in-error until the balance of purchase money was paid. The contract was recorded, as required by Georgia law.

On October 15, 1918, while $650 of the purchase money was still unpaid, Thompson used the car to transport liquors on which the tax had not been paid. For this fraud, the Government seized the car and forfeited it under U. S. R. S. 3450. Plaintiff-in-error did not participate in any way in the illegal act and was guilty of no negligence.

**The questions involved** are as follows:

1. Whether U. S. R. S. 3450 should not be so construed as to authorize the forfeiture only of the interest or equity of Thompson, or Thompson and Lamb, and not the title of plaintiff-in-error, the innocent owner.

2. If this cannot be done without doing violence to the language of R. S. 3450, and 3450 is accordingly

to be construed as demanding the forfeiture of the title of plaintiff-in-error, who was wholly free from negligence and not even remotely connected with the illegal act of Thompson, whether that statute is not unconstitutional in that it authorizes the taking of the property of plaintiff-in-error without due process of law.

**The manner in which these questions were raised** is as follows:

1. By paragraphs 4 and 5 of plaintiff-in-error's intervention. Transcript of record, page 4.

2. By paragraphs 6 and 7 of plaintiff-in-error's answer. Transcript of record, page 11.

3. By plaintiff-in-error's amended answer. Transcript of record, page 14.

4. By written request on the Court to charge the jury in favor of plaintiff-in-error's contentions. Transcript of record, page 29.

5. By exception to the charge actually given. Transcript of record, page 29.

6. By exceptions to the verdict of the jury. Transcript of record, page 17.

7. By exceptions to the Judgment of January 16, 1919. Transcript of record, page 18.

8. By paragraphs 5, 7 and 8 of planitiff-in-error's motion to set aside verdict and grant new trial. Transcript of record, page 19.

9. By paragraphs 9 and 10 of plaintiff-in-error's amended motion to set aside verdict and grant new trial. Transcript of record, page 21.

10. By exception to the final judgment of the Court December 12, 1919, overruling the motion to set aside the previous judgment and grant a new trial and making the judgment of January 16, 1919, final and absolute. Transcript of record, page 24.

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## SPECIFICATION OF ERRORS RELIED ON.

1. The refusal of the Court to charge the jury as requested in writing by plaintiff-in-error as follows:

> "If you should believe from the evidence that J. W. Goldsmith, Jr.-Grant Company, Inc., sold the Hudson automobile seized in this case to J. G. Thompson and W. M. Lamb under a conditional sale contract reserving title in good faith and without any knowledge or notice or reasonable ground to believe that said car might be put to any illegal use, and if you should believe that neither said corporation nor any of its officers, agents or employees participated

in any way, directly or indirectly, in the illegal use to which said car was put, and if you should believe that the balance of the purchase money has never been paid and that the title reserved by J. W. Goldsmith, Jr.-Grant Company, Inc., as security for the balance of the purchase money has never been divested, then I charge you title of J. W. Goldsmith, Jr.-Grant Company, Inc., to said car could not be condemned in this proceeding, and that only the interest or equity if any of said J. G. Thompson and W. M. Lamb could be condemned."

Transcript of Record, page 32.

2. The refusal of the Court to direct a verdict for plaintiff-in-error on the ground that U. S. R. S. 3450 was unconstitutional and violative of Article 5 of Article 8 of the Constitution. Transcript of Record, page 31.

3. The refusal of the Court to direct a verdict for plaintiff-in-error on the ground that U. S. R. S. 3450 was not to be construed to give the United States the right to forfeit the title of a third party, innocent of wrongdoing, who did not participate in the wrongful act, and who at the time he consented to the possession by the third party who afterwards became the wrongdoer, had no reason to believe that the car was likely to be put to an unlawful use; and that the proper construction of R. S. 3450 was to authorize a forfeiture of the interest or title only of the wrongdoer. Transcript of Record, page 31.

4. The charge actually given to the jury, as follows:

> "Gentlemen of the jury, I am compelled to instruct you, under a recent decision of our Circuit Court of Appeals, that under the facts stated here and under the situation it was, this property is guilty and ought to be so found. And you will find it guilty notwithstanding what is in the record. The jury can find a verdict." Transcript of Record, page 32.

5. The entry of the original judgment on the verdict. Transcript of Record, page 18.

6. The entry of the final judgment of December 12, 1919. Pages 23 and 24, Transcript of Record.

## THE FOLLOWING BRIEF EMBRACES THESE MAIN POINTS:

Forfeiture of the property of an innocent man for the wrong of another is violative of fundamental rights. The exact language of U. S. R. S. 3450, if strictly taken, authorizes such a forfeiture.

Therefore:

3450 is unconstitutional, unless it can be so construed as not to authorize such a forfeiture.

Such a construction is possible. U. S. vs. Doremus, 249 U. S. 86.

If it is claimed that in Dobbins vs. U. S., 96 U. S. 395, and U. S. vs. Stowell, 133 U. S. 1, this Court has decided against such a construction of statutes similar to 3450, we respectfully submit that (with the possible exception of the butts in the latter case), those two cases are distinguishable on their facts from the case at bar. If the facts as to the butts in the Stowell case are not so distinguishable, we think this Court should review and overrule that part of that decision.

But no question as to the constitutionality of the Acts, there under consideration, was made in either of these cases.

The constitutional question made in the case at bar is open.

The theory that in these **in rem** proceedings the thing is the offender and forfeitable irrespective of the guilt or innocence of its owner, is a wornout fiction. The Circuit Courts of Appeal still adhere to it in these forfeiture cases. This Court should discard this fiction and refuse to regard it.

Boyd vs. U. S. 116 U. S. 616;

Coffey vs. U. S. 116 U. S. 427.

Congress having no general police power, and the Act of 1866 of which 3450 is a part being a Revenue Act, Congress had no power to put into it any penalty which was not a reasonable and necessary aid to the collection of the revenue. The forfeiture provision of 3450 is not such an aid. It is neither reasonable nor necessary. If the objectionable features of 3450 were inserted in an attempt to exercise the police power, they are void.

United States v. Jin Fuey Moy, 241 U. S. 394.

United States v. Dewitt, 9 Wall. 41.

(In this brief, the **heavy black** in the quotations is ours.)

## BRIEF OF ARGUMENT AND AUTHORITIES.

The Government had no unpaid tax due on the automobile. The tax of which Thompson attempted to defraud the United States was a tax on his spirituous liquors. Plaintiff-in-error did not own the liquors, had nothing to do with them, did not know they were in existence.

Yet its property has been forfeited, on account of the unpaid tax on these liquors.

Under the judgment of the lower Court, the Government has seized and forfeited certain property of A on which no tax was due, because B attempted to evade payment of a tax **due by him on other property.**

We respectfully submit that this is no more nor less than the punishment of an innocent man who was free even from negligence, on account of a crime committed by another.

That is all that is involved in the taking of A's property for a tax due by B. It cannot be done, without a violation of the fundamental constitutional rights of A.

It is sought to justify this forfeiture under the ancient fiction that the thing (automobile) was the offender. The theory of the cases that have en-

forced this rule is that the vehicle is the criminal and must be punished.

But since the decision of the Supreme Court in Boyd vs. United States, 116 U. S. 616, 6 S. C. R. 524, there has never been any obstacle in the way of the Supreme Court holding that this fiction was not to be followed where it would violate the constitutional rights of a citizen. Mr. Justice Bradley in this case stated: "It is his breach of the laws which has to be proved to establish the forfeiture, and it is his property which is sought to be forfeited . . . Goods, as goods, cannot offend . . . but men whose goods they are."

It is remarkable that it should be necessary to discuss the question whether an inanimate automobile can commit a crime. The mere statement of the proposition is sufficient to show its absurdity. With our knowledge of what is involved in any criminal act: motive, intent, execution, why should we adhere to this ancient and absurd fiction?

Yet in practically all the cases where the District Courts and the Courts of Appeal have upheld forfeitures similar to the one involved in the case at bar, it has been on the theory that in these **in rem** cases, the thing itself is treated as the offender. We shall touch on this point again, for it runs through much of our argument, but just here we wish to refer to Coffey vs. United States, 116 U. S., page 427.

"HEADNOTE:—The claimant set up, by answer, a prior judgment of acquital on a criminal information against him by the United States, in the same Circuit Court, founded on the same sections of the Revised Statutes sued on in this suit, and alleged that such criminal information contained charges of all of the violations of law alleged in the information in this suit (i. e., an attempt to defraud the United States under Section 3257 R. S.; removing and concealing in violation of Section 3450 R. S. and Section 3453 R. S.) . . . HELD, that although one section counted on in the information declared, as a consequence of the commission of the prohibited act (1) that certain specific property should be forfeited, and (2) that the offender should be fined and imprisoned, yet, as the issue raised as to the existence of the act or fact had been tried in the criminal proceeding against the claimant, instituted by the United States, and a judgment of acquittal rendered in his favor, that judgment was conclusive in his favor in this suit." . . .

This was an information against the property itself, and it is very obvious that Mr. Justice Blatchford was of the opinion that it was not necessarily the property that should be convicted, but that bona fide claimants would have a right to defend an information **in rem**, when he said in the body of the opinion:

"The principal question is as to the effect of the indictment, trial, verdict and judgment of acquittal set up in the fourth paragraph of the answer. The information is founded on Sections 3257, 3450 and 3453, and there is no question, on the averments in the answer, that the fraudulent acts and attempts and intents to defraud alleged in the prior criminal information, and covered by the verdict and judgment of acquittal, embraced all of the acts, attempts and intents averred in the information in this suit. The question, therefore, is distinctly presented, whether such judgment of acquittal is a bar to this suit. We are of the opinion that it is. . ."

If in the **in rem** proceeding, the property, the property itself is treated as the offending party, how can the acquittal of another party (the owner) in a separate criminal case, be a bar to the **in rem** proceeding for forfeiture? Yet the Supreme Court so held in the Coffey case.

The necessity of rigorous laws to prevent tax frauds is conceded. Taxes have been often called the lifeblood of the Government. The Government must have revenue, if it is to exist.

The Act of 1866 of which 3450 is a part, is a tax act pure and simple. With all the Government's sources of revenue, has it become necessary to take the property of an innocent man who owes no taxes,

simply because another man has not paid a tax due by him on other property?

Does the Government want taxes, exacted at such a price?

## CAN R. S. 3450 BE CONSTRUED SO AS NOT TO AUTHORIZE THE FORFEITURE OF THE TITLE OF AN INNOCENT OWNER?

That part of 3450, which is here involved, reads as follows:

> "Wherever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed, in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited."

If 3450 be literally read, it certainly means the forfeiture of the vehicle irrespective of ownership or the circumstances under which the wrongdoer got possession. Its exact letter requires the holding that if A locks his automobile into his garage at

night and a thief steals it out and uses it in transportation of liquors on which no tax has been paid, A's car is forfeit to the Government and he has no redress. That is exactly what 3450 means, if literally read.

That neither it nor any similar statute was ever intended to go to such lengths, has been repeatedly recognized by our Courts, and in order to protect such an innocent owner from such an invasion of his private rights, those Courts have deliberately read into such Statutes saving clauses which the enacting bodies had omitted.

In doing this, the Courts were simply applying the "Rule of Reason," which they have justly assumed the right to apply in all appropriate cases.

More than a century ago this Court applied this "Rule of Reason" in the case of Peisch v. Ware, 4 Cranch 347, where a cargo of wine was landed from a disabled vessel and although the strict letter of the Revenue Laws was clearly violated, the wine was not forfeited.

On page 362 the Court said: "In the foregoing provisions the legislature, in the opinion of this Court, did not intend to comprehend wrecked goods, or goods found under circumstances like those in The Favorite (the wrecked vessel), when the vessel was deserted by her crew, and where it might be necessary, for the preservation of the goods, to take

them to the nearest accessible port of the coast. Either these spirits and wines would have been liable to forfeiture if brought to land under the most pressing circumstances where inevitable loss must attend any delay if a revenue officer should not be present to take possession of them or the single circumstance of their being found unmarked and unaccompanied with certificates, is not in itself sufficient to forfeit them. The opinion of the Court that it was not the intention of the legislature to subject goods under such circumstances with forfeiture, is not formed exclusively on the extreme severity of such a regulation. It is formed also on what is deemed a fair construction of the language of the several sections of the law which seems not adapted to cases like the present."

In this case, Judge Marshall said further:

> "The Court is also of opinion that the removal for which the act punishes the owner with forfeiture of the goods must be made with his consent or connivance, or of that of some person employed or trusted by him." And again: "The law is not understood to forfeit the property of owners or consignees on account of the misconduct of mere strangers, over whom such owners or consignees can have no control."

In Trueman v. 403 Quarter Casks of Gunpowder, Thatch Cr. Cas. 14 (Mass.), under a statute providing that gunpowder which any person should possess within 200 yards of a wharf should be forfeited, it was held that where a boat containing gunpowder was driven within the 200-yard limit by a storm and without the negligence or fault of the persons in custody, it was not forfeited.

But if the statute meant exactly what it said, how could the Court read into it this exception?

Let us now examine some of the related sections of this act of 1866 and see whether they are adapted to a case like the present.

R. S. 3450, 3460, 3461 (Sections 6352, 6362, 6363 U. S. Compiled Statutes 1918), should be read together. They are all parts of the Act of 1866 as amended by the Act of 1872.

3461 provides for the protection of an innocent owner who is absent and therefore files no claim when his property is seized.

Clearly 3460 must be presumed to provide for the protection of the innocent owner who is present and does file a claim.

3450 should therefore be construed to provide for the forfeiture of no interest for which 3460 and 3461 offer protection.

Section 3460 is as follows:

"In all cases of seizure of any goods, wares, or merchandise, as being subject to forfeiture, under any provision of the internal revenue laws, which, in the opinion of the collector or deputy collector making the seizure, are of the appraised value of five hundred dollars or less, the said collector or deputy collector shall, ex-

cept in cases otherwise provided, proceed as follows:"

Paragraph 3 provides for the claim procedure; paragraph 4 for the method of sale in the event no claim is filed and no bond given.

Section 3461:

"Within one year after the sale of any goods, wares, or merchandise, as provided in the preceding section, any person claiming to be interested in the property sold may apply to the Secretary of the Treasury for a remission of the forfeiture thereof, or of any part thereof, and a restoration of the proceeds of the sale; and the said Secretary may grant the same upon satisfactory proof, to be furnished in such manner as he shall prescribe: Provided, That it shall be satisfactorily shown that the applicant, at the time of the seizure and sale of the said property, and during the intervening time, was absent, out of the United States, or in such circumstances as prevented him from knowing of the seizure, and that he did not know of the same; and also that the said forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of said property. If no application for such restoration is made within one year, as hereinbefore prescribed, the Secretary of the Treasury shall, at the expiration of the said time, cause the pro-

ceeds of the sale of the said property to be distributed according to law, as in the case of goods, wares, or merchandise condemned and sold pursuant to the decree of a competent court."

The meat of this section is **"and also that said forfeiture was incurred without willful negligence or any intention of fraud on the part of the owner of said property."**

This clearly shows the intention of Congress to protect the owner who is without willful negligence and intention to defraud.

If the innocent owner who has not claimed because he was absent, can get his money back by showing he was free from willful negligence or any intention of fraud, then will not an innocent owner who is present and does claim, be equally protected?

It is his innocence of wrongdoing and his freedom from negligence that are the determining factors; not his absence or presence.

The scope and purpose of the Act of 1866 as amended in 1872 is, of course, to be ascertained from its consideration as a whole.

It provides what shall happen to vehicles used for the illegal purposes under consideration.

It provides for the filing of claims to vehicles seized when they are of a certain value.

It provides that if an owner is absent and has no knowledge of the seizure and later comes and shows that the forfeiture was incurred without his willful negligence or any intention of fraud, he can get back his money.

Is it possible to maintain the position that it was the intention of Congress that an innocent owner who is absent and therefore does not claim, shall be placed in a better position than the innocent owner who is present and does claim? If the one is protected, if he can show that he was without willful negligence or any intention of fraud, should not the other be? It is impossible to believe that Congress intended a discrimination in favor of the absent owner.

If this position is not sound what is the object of the claim provisions of 3460? What is it the claimant is to claim, if not the title? What is it the court is to try, if not his innocence?

If 3450 is to be construed as forfeiting the title of every owner, guilty or innocent, 3460 is inoperative. Of what use is it for an owner to claim title under 3460, if under 3450 that title is forfeited?

It cannot be contended that 3460 was solely for the determination of a dispute as to the **fact** whether

the vehicle had been used illegally; because 3461 provides for relief of an owner whose vehicle **has** been used illegally. If 3460 was limited to that issue, 3461 would have been equally limited.

3460 and 3461 are to be read together. They are parts of one integral whole, and the only fair and reasonable construction is that they are intended to protect the man whose vehicle is seized and who is himself free from negligence and intent to defraud. The one part of the law protects the man who knows of the seizure and claims, and the other part protects the man who being absent does not know of the seizure and who therefore does not claim.

Plaintiff-in-error was a licensed automobile dealer. In the ordinary conduct of this lawful business it sold this car to Thompson and Lamb, reserving title. This was a lawful act.

There was nothing about the transaction, about the car, or about Thompson and Lamb, that indicated even remotely that the car would possibly be put to an unlawful use.

The contract under which Thompson and Lamb bought the car was one of conditional sale, and under it the title to the car was not to pass to Thompson and Lamb until the purchase money was paid. The legal effect of the contract was to give Thompson and Lamb the right to possess and use the car

and the right to acquire the full title when they should pay the balance due.

Georgia Code (Park's), Section 3318:

> "Wherever personal property is sold and delivered with the condition affixed to the sale that the title thereto is to remain in the vendor of such personal property until the purchase-price thereof shall have been paid, every such conditional sale, in order for the reservation of title to be valid as against third parties, shall be evidenced in writing, and not otherwise. And the written contract of every such conditional sale shall be executed and attested in the same manner as mortgages on personal property; as between the parties themselves, the contract as made by them shall be valid and may be enforced, whether evidenced in writing or not."

Recording within thirty days from date is required of such contracts to make them valid as against third parties without notice.

Georgia Code (Park's), Section 3319:

> "Conditional bills of sale must be recorded within thirty days from their date, and in other respects shall be governed by the laws relating to the registration of mortgages."

The record of the contract in question was within

thirty days from its date.

Without the slightest negligence on the part of plaintiff-in-error, without the slightest notice or knowledge, without the happening of anything even to put them on inquiry, the car was seized by virtue of the unlawful act of another, and confiscated.

Under a literal construction of 3450, precisely the same result would have followed if Thompson had stolen the car from plaintiff-in-error. Yet so far as we have been able to find, no court has ever held that forfeiture of the true owner's title would result from the unlawful use of a stolen vehicle, and under the principle enunciated in Peisch v. Ware Supra, such a holding certainly will never be had.

Yet why not, if it be true that the thing itself is the offender?

From the unmistakable statements in the principles of the decisions of our courts, it is apparent that when a case arises where a stolen vehicle is used to transport untaxpaid liquors it will not be forfeited. The courts have clearly indicated, that in such a case they would read that exception into 3450. If they can do that, in the face of its plain statement that **every** vehicle so used shall be forfeited, they have the right to read into it the exception that it shall not apply to the interest of an innocent owner who is free from negligence. That is the construction we are now asking the court to put

upon 3450. That it has the right to do it, we think clear.

It would unnecessarily expand this brief to cite cases defining the Court's power of construction. They will be found collected in the article on Statutes in 36 Cyc. The general principles now in point are thus stated by the author, and are supported by satisfactory authorities:

Page 1107:

> "Where the language of the statute is of doubtful meaning, or where an adherence to the strict letter **would lead to injustice**, to absurdity, or to contradictory provisions, the duty devolves upon the court of ascertaining the true meaning."

Page 1108:

> "In pursuance of the general object of enforcing the intention of the legislature, is the rule that the **spirit or reason** of the law will prevail over its letter. Especially is this rule applicable where the literal meaning is absurd, or, if given effect, **would work injustice** . . . Words may accordingly be rejected and others substituted, even though the effect is to make portions of the statute entirely inoperative. So the meaning of general terms may be restrained by the **spirit or reason** of the statute, and general

language may be construed to admit implied exceptions."

The spirit and reason of the law of 1866 must be limited to the collection of taxes and prevention of fraud. The spirit of the statute must be presumed to be not to violate fundamental constitutional rights.

That the general language may be construed to admit implied exceptions has been proved in the case of 3450 by the exception above referred to, which it is plainly indicated will be written into the statute by the courts, that it shall not be construed to forfeit property stolen from an innocent owner by the wrongdoer.

All that we contend for is that the language should be construed to admit another exception equally reasonable.

36 Cyc. 1110 and 1111:

> "Every statute must be construed with reference to the object intended to be accomplished by it . . . If the purpose and well-ascertained object of a statute are inconsistent with the precise words, the latter must yield to the controlling influence of the legislative will resulting from the whole act."

The well ascertained object of the act of 1866 was to collect taxes and prevent tax frauds, and it

will be conclusively presumed that the intent was that this should be done without violating constitutional rights. That being so, the "precise words" of the statute must yield.

36 Cyc. 1114:

> "In the interpretation of statutes, words in common use are to be construed in their natural, plain, and ordinary signification. It is a very well-settled rule that so long as the language used is unambiguous, a departure from its natural meaning is not justified by any consideration of its consequences, or of public policy; and it is the plain duty of the court to give it force and effect."

But this estatement is followed immediately by this significant proviso:

> "But in obedience to the cardinal rule of ascertaining the intention of the legislature, if more than one significance may reasonably be attached to the language used, **or a literal construction will make the act absurd, or will lead to injustice, the court may properly resort to construction.**"

36 Cyc 1130:

> "In accordance with the well-settled principle that the last expression of the legislative will is the law, in case of conflicting provisions in the same statute, or in different statutes, the

> last enacted in point of time prevails; and on the same principle, if both were enacted at the same time, the last order of arrangement controls."

We endeavored above to make clear that 3460 and 3450 being both parts of the Act of 1866, should be construed together, 3460 providing for the filing of a claim could have no effect if such claimant did not come within an implied exception to the strict language used in 3450. 3460 being later than 3450, 3460 is the later expression of the legislative will and must control. If 3450 excluded the rights of an innocent claimant, then it was just that far changed by 3460.

We contend that the legal result of providing for the claim in that part of the Act which is now 3460, appearing in the Act after that part which is now 3450, impliedly wrote into 3450 whatever exception was necessary to make it consistent with 3460.

36 Cyc. 1144:

> "Every statute is to be construed with reference to the general system of laws of which it forms a part, and must therefore be interpreted in the light of the customary or unwritten law of other statutes on the same subject, and of the decisions of the courts."

This statute, 3450, is a part of the general system of laws relating to taxation. No necessity for taxa-

tion can ever extend to the taking of the property of one man because another man attempts to defraud the Government of taxes due on other property.

36 Cyc. 1187:

> "In order to enforce a penalty against a person he must be brought clearly within both the letter and the spirit of the statute."

Plaintiff-in-error in the case at bar may be within the letter of that part of the statute which appears as 3450, but it can never be said that it is within the true spirit of the entire Act of 1866.

36 Cyc. 1189 on the subject of revenue laws:

> "The provisions of such statutes are not to be extended beyond the clear import of the language used; in order to sustain the tax, it must come clearly within the letter of the statute, and the power granted to officers charged with its execution must be strictly pursued. So, statutes creating forfeitures, or authorizing sales of property for non-payment of taxes, must be construed strictly in favor of the citizen, and provisions allowing redemption from such sales should be construed liberally in his favor."

The Supreme Court cases which are most frequently considered in all arguments relative to forfeitures for violation of internal revenue laws are

Dobbins Distillery v. United States, 96 U. S. 395, and United States v. Stowell, 133 U. S. 1.

In a discussion of these cases it should be borne in mind that in neither case was the constitutionality of the revenue act involved passed on, and in both cases the innocent owner knew the property was being used for distilling purposes—a business hedged about with the strictest regulations, the slightest violation of which involved forfeiture.

It is submitted therefore, at the outset, that there is nothing in either case in the way of the court holding in the case at bar that R. S. 3450 is unconstitutional, or that the different facts of this case distinguish it.

If we are wrong as to the latter proposition, then we respectfully ask the court to review and overrule that case which is considered in the way of the construction of R. S. 3450, which we have heretofore in this brief sought to have put upon it.

"While the general authority of adjudications is not denied, the court is not, however, precluded from the right nor exempted from the necessity of examining into the correctness or consistency of its own decisions or those of any other tribunal. Moreover, the Supreme Court does not hestitate to overrule an erroneous decision."

11 Ency. of U. S. Reports (Michie), pp. 31, 32.

As to the Dobbins case:

This was decided on two principles:

First, that of the ancient fiction that the thing was the offender, which we have discussed above and which we earnestly submit on the authority of Boyd v. United States, 116 U. S. 616, and the remarks of Mr. Justice Bradley therein should no longer be followed when it will work such injustice as has accrued to the innocent plaintiff-in-error in the case at bar.

Second. The proposition enunciated on page 399:

> "Nor is it necessary that the owner of the property should have knowledge that the lessee and distiller was committing fraud on the public revenue, in order that the information of forfeiture should be maintained. If he knowingly suffers and permits his land to be used as a site for a distillery, the law places him on the same footing as if he were the distiller and the owner of the lot where the distillery is located; and, if fraud is shown in such a case, the land is forfeited, just as if the distiller were the owner. Burroughs, Taxation, 67."

That is the meat of the Dobbins decision. It was the sufferance of the owner that his property should be used for distilling purposes. It may be held reasonable that when a man permits his property to

be used for such a purpose he deliberately assumes the risk of its loss, if it is illegally used. It is a good deal like a man renting an automobile to haul a high explosive. The owner knows if the freight explodes, his car will be destroyed. He may be assumed to take that risk.

But the business of selling automobiles on time contracts, is **not** one hedged about like the distilling business by the strictest sort of Governmental restrictions. Such business is one of a most innocent nature.

We can see nothing in the Dobbins case that requires an affirmance of the case at bar. The two are clearly distinguishable.

As to U. S. vs. Stowell, 133 U. S. 1.

A part of this decision is strongly in support of the principles for which we are contending. If any part of it appears to be against us, we respectfully submit that that part is not in accordance with principles of justice and constitutional rights and should be distinguished from the case at bar. If this cannot be done, it should, we think, be reviewed and overruled.

In the Stowell case the following property was attempted to be forfeited:

1. The real estate on which the distillery was located.

2. The still with its machinery.

3. The malt and hops.

4. Two horses, wagons and harness.

5. The butts.

1. As to the real estate, the interest which Stowell claimed as mortgagee was held not forfeitable under the language of the act which declared forfeit only the right, title and interest of the distiller.

2. The still was, of course, forfeited.

3. The malt and hops had not been sold to the claimant, Stowell, until **after** the illegal act which caused the forfeiture. They were, of course, forfeited.

4. The horses and wagons were in the same condition as the malt and hops.

5. The butts **had** been sold to Stowell before the illegal act.

With only the butts, therefore, are we particularly concerned in a consideration of this decision as affecting the case at bar.

These butts had been owned by Dixon, the brewer, and used by him on the brewery premises. They were a part of his equipment. Although they had been sold by Dixon to Stowell before the illegal act, "yet they were suffered by Stowell to remain in Dixon's possession, custody and control, and were upon the premises at the time of the commission of the offense, and found there at the time of the seizure." Page 19 of the 133 U. S.

The language of the Act under which the butts were forfeited in the Stowell case is similar to R. S. 3450.

We are therefore brought squarely to the question:

Was the legal status of these butts at the time of the seizure an exact parallel to the legal status of our automobile at the time it was seized in the case at bar?

If so, then if the Stowell decision stands, it is authority for an affirmance of the case at bar on the question of the construction of R. S. 3450 for which we have been contending and our only hope is to have this Court decide with us on our second question: the unconstitutionality of R. S. 3450.

But our position is,

1. That the legal status of the butts was not the same as that of our automobile.

2. If we are wrong in this, then the Stowell case, in so far as the decision relative to the butts is concerned, was wrong in principal and should so far be overruled or modified.

We should like here to call attention, as matter of argument, to the following quotation from Judge Batts, in his dissenting opinion in Mincey vs. United States, 254 Fed. 287:

> "The holding in United States vs. Stowell, 133 U. S. 1, 10 Sup. Ct. 244, 33 L. Ed. 555, that buildings and fixtures erected for distilling, and leased and used for that purpose, may be forfeited for failure of lessee to comply with the revenue laws, may be justified by the owner's destination of the property for a business necessarily under strict regulations, with knowledge of the consequences of their infraction.
>
> "To hold that section 3450, R. S. U. S. (Comp. St. 1916, Sec. 6352), subjects property designed for and used in transportation generally to forfeiture, when used in carrying distilled spirits upon which the tax has not been paid, by one to whom it has been let for an innocent and proper purpose, the owner being without fault,

is to ascribe to the legislative department an indifference to fundamental constitutional principles not warranted so long as another construction is possible.

"That the powers incidental to taxation are necessarily strong, and that in their practical administration inequalities and injustices almost necessarily result, can afford no justification for the disregard of basic rights which the Government was formed to protect."

The decision in United States vs. Stowell, 133 U. S. 1, can be upheld on the same theory as the Dobbins case, and this Stowell case, head note 3, illustrates the application of reason and justice to the construction of such statutes.

"Section 3305 provides that in case of omission to keep the books required by law 'the distillery, distilling apparatus and the lot or tract of land on which it stands,' shall be forfeited, will not be construed to include the interests of innocent third persons, as the forfeiture would be more comprehensive than that provided for the graver offenses declared against in Section 3281."

Yet there is no saving clause in 3305 as to the interests of innocent third persons. The Supreme Court read these words into 3305 because it would

have been unreasonable to have left them out, and it will not be presumed that Congress meant to do an unreasonable thing.

There is no saving clause in 3450 as to the interests of innocent third persons, but if the court does not read them into the Act, great wrong will be done and a tremendous business (that of selling automobiles on extended payments) will be largely done away with.

In the Stowell case on page 13 of the 133 U. S., Mr. Justice Gray makes some very significant remarks.

> "The second provision must therefore extend to some property not fit or intended to be used in distilling spirits. In order to give it such effect as will show any reason for its insertion in the statute, it must be construed to intend, at least, that all personal property which is knowingly and voluntarily permitted by its owner to remain on any part of the premises, and which is actually used, either in the unlawful business, or in any other business openly carried on upon the premises, shall be forfeited, even if he has no participation in or knowledge of the unlawful acts or intentions of the person carrying on business there; and that persons who intrust their personal property to the custody and control of another **at his place of business** shall take the risk of its being subject to forfeiture, if he con-

ducts, or consents to the conducting of, any business there in violation of the revenue laws, without regard to the question whether the owner of any particular article of such property is proved to have participated in or connived at any violation of those laws. The present case does not require us to go beyond this, or to consider whether the sweeping words 'all personal property' must be restricted by implication in any other respect, for instance, **as to personal effects having no connection with any business, or as to property stolen or otherwise brought upon the premises without the consent of its owner."**

All the personal property involved had been left in the possession of the distiller and on the premises. The owners (like the owner in the Dobbins case) took the risk of the dangerous business then being conducted. That seems to have been the determining factor.

But in the words of Mr. Justice Gray last quoted are significant. It is a clear intimation that in a proper case made, the Court might, if it chose, restrict by implication "the sweeping words 'all personal property' " as they might be applied either to personal effects having no connection with any distilling business or as they might be applied to property stolen or otherwise brought upon the premises without the consent of the owner.

It would seem that in Mr. Justice Gray's mind, **stolen personalty,** and **personalty brought on the premises without consent of the owner,** were in the same class, and we construe his language to be a distinct warning that what he was deciding in the Stowell case was not to be taken as **stare decisis** as to any case which might subsequently arise where the property sought to be forfeited had been stolen or brought upon the distiller's premises without the consent of the owner.

Now, we earnestly submit, is not property which is by an innocent owner entrusted to another for a lawful use and then used illegally without that owner's knowledge or consent, in exactly as favorable a position as property entrusted to another and taken without the owner's consent upon the premises of a distiller? If an innocent owner would be protected if his property were taken without his consent upon the distiller's premises, should he not be protected if his property is itself used illegally without his consent? Is not the latter case rather a greater outrage on the owner's rights? In the first case, his implied direction not to take his property to the place of danger is violated, but in the latter case his rights seem to be much more wantonly violated, for his property is itself put to the illegal use.

As to the stolen property in question, it seems to us the cases are quite parallel. It is inconceivable that our courts will ever construe 3450 to authorize

the forfeiture of stolen property, yet we can well see that an upright automobile owner who locks his car into his garage at night and has it stolen out and used in illicit hiskey transportation would feel no greater sense of outrage than a similar owner who entrusted his car to a friend who similarly used it.

The matter cannot turn on the question whether the possession is with the consent of the owner. The right of an owner of property to deliver its possession to another is such a fundamental right of property that we should be subject to criticism if we argued it.

The question of mere consent to possession cannot in the very nature of things have any bearing on the case.

On this question of construction, United States vs. Jin Fuey Moy, 241 U. S. 394: 36 S. C. R. 658, is a valuable case. Section 8 of the U. S. Opium Act of 1914 made it unlawful for "any person" who was not registered and had not paid the special tax to have the drug in his possession or control. Counsel for the Government contended that it was really a police measure; that Congress gave it the appearance of a taxing measure "in order to give it a coating of constitutionality;" that the words "any person," meant just what they said and embraced the defendant.

But the Court said in the head note: "The grave doubts as to congressional power which any other construction would raise require that the provisions . . . of section 8 making it unlawful for any person . . . be construed as referring to those only who are required by that statute to register and pay the special tax . . . "

In the course of the opinion: "Only words from which there is no escape could warrant the conclusion that Congress meant to strain its powers almost if not quite to the breaking point in order to make the probably very large proportion of citizens who have some preparation of opium in their possession criminal or at least prima facie criminal, and subject to the serious punishment made possible by section 9. It may be assumed that the statute has a moral end as well as revenue in view, but we are of opinion that the district court, in treating those ends as to be reached only through a revenue measure, and within the limits of a revenue measure, was right."

The sweeping words "any person" are not more nor less comprehensive than the words "every . . conveyance," as they appear in R. S. 3450.

The court then proceeded to say that the words "any person not registered," must not be taken to mean any person in the United States but must be taken to refer to the class with which the statute undertakes to deal, the persons required to register by section 1. "It is true that the exemption of posses-

sion of drugs prescribed in good faith by a physician is a powerful argument, taken by itself for a broader meaning. But every question of construction is unique, and an argument that would prevail in one case may be inadequate in another.

Now we respectfully submit, the words, "every . . . conveyance," as used in R. S. 3450 are not to be taken to mean every conveyance in the United States, but they must be construed in the light of the entire subject matter of the act. The law is dealing with matters highly penal in their nature. The object is to collect revenue and stop tax frauds. The unstamped liquors are to be confiscated and the things used in their manufacture seized. All things directly concerned in the guilty act are to be dealt with. But when it comes to dealing with the vehicles used in the removal, common experience showing that such vehicles are often so used illegally without the knowledge, permission or negligence of their owners, will not the words "every . . . conveyance," be referred to the criminal class with which the Act is dealing and be construed only to mean every conveyance owned and so used by the lawbreaker, or only the interest in the vehicle of the lawbreaker, or of him who consented to the illegal use, or whose negligence made it possible for it to be so used?

## THE CONSTITUTIONALITY OF 3450.

If R. S. 3450 cannot be so construed as to mean that the title of plaintiff-in-error in the automobile seized in this case will not be forfeited; then we submit that it is unconstitutional.

The result of the proceedings in the lower court, operating through the authority of 3450, has been to deprive plaintiff-in-error of its property without due process of law. Plaintiff-in-error has done no wrong and been guilty of no negligence. Congress had no power to pass a law that would result in taking this property of plaintiff-in-error, without any compensation, for a wrong committed by another.

In Maryland v. B. & O. Ry., 3 How. 534, this court said on page 552: "In legislative proceedings . . . a forfeiture is always to be regarded as a punishment inflicted for a violation of some duty enjoined upon the party by law . . . "

We submit there cannot constitutionally be a forfeiture for anything else. There cannot constitutionally be a forfeiture of property belonging to one party because of a breach of duty by another party.

We have been unable to find any case where the Supreme Court has ever had before it the constitutionality of 3450 or of any similar statute, whether

relating to Indians, smuggling, customs, or revenues. The point that such a statute, if held to authorize the forfeiture of the title of an innocent owner would be unconstitutional, so far as we have been able to find, has never been made before the Supreme Court.

To enforce the payment of taxes due on liquor, and as a punishment for the transportation of liquor on which the tax has not been paid in order to deter others from a similar fraud, the Government has the power to seize the liquor and the lawbreaker, destroy the one and punish the other as a criminal. In its effort to get its taxes and in its effort to stop such illegal transportation, is it necessary to go so far as to seize and confiscate the vehicle used when that vehicle is owned by another individual, innocent of any participation in the illegal act and who entrusted the use of the vehicle to a man who was not even suspected as one who would likely commit a breach of the law?

To state the question is to answer it.

How can such a forfeiture be a **necessary** aid to the Government in the collection of its revenue?

If a man own an automobile, the right to entrust its possession to another is equally a right of personal liberty and a right of property guaranteed by the Constitution. If the owner has no reason to apprehend that the one so entrusted with possession is likely to put the car to an illegal use, then the owner

has not even been guilty of negligence. Being guilty of absolutely nothing, his right of property and personal liberty must be protected. And if Congress declares that notwithstanding his absolute innocence his property if wrongfully used shall be forfeited, such legislation is arbitrary and unreasonable and beyond the necessities of the case. For Congress cannot under the guise of aiding the Government in the collection of its revenue, arbitrarily interfere with private business or with personal and property rights.

In Bartemeyer v. Iowa, 18 Wall. 129, Mr. Justice Field in his concurring opinion on page 137 said: "The right of property in an article involves the power to sell and dispose of such article as well as to use and enjoy it. Any act which declares that the owner shall neither sell it nor dispose of it, nor use and enjoy it, confiscates it, depriving him of his property without due process of law."

Is not the right to turn the possession of property over to another, a right to use and enjoy? Is not an Act which declares that if a man so permit another to have possession, he permits it at the peril of the loss of his property if the possessor puts it to an illegal use, an Act which provides for depriving one of his property without due process of law?

In Holden v. Hardy, 169 U. S. 366, 18 S. C. R. 383, the Court said:

"'Due process of law' implies at least a conformity with natural and inherent principles of justice, and forbids that one man's property or right of property, shall be taken for the benefit of another, or for the benefit of the State, without compensation, and that no one shall be condemned in his person or property without an opportunity of being heard in his own defense."

In the opinion on page 389 of the 169 U. S., Mr. Justice Brown said: "This Court has never attempted to define with precision the words 'due process of law' . . . It is sufficient to say that there are certain immutable principles of justice which inhere in the very idea of a free government, which no member of the Union can disregard . . "

On page 391 he says:

"The latest utterance of this court upon this subject is contained in the case of Allgeyer v. Louisiana, 165 U. S. 578, 17 Sup. Ct. 427, in which it was held that an act of Louisiana which prohibited individuals within the state from making contracts of insurance with corporations doing business in New York was a violation of the fourteenth amendment. In delivering the opinion of the court, Mr. Justice Peckham remarked: 'In the privilege of pursuing an ordinary calling or trade, and of acquiring, holding, and selling property, **must be embraced the right to make all proper contracts in relation thereto;** . . .'"

Every citizen having the right to make all proper contracts relative to his property, is it not true that "immutable principles of justice" require the protection of those contracts? Are not those principles outraged, when having made a legal contract relative to the use of his property, that property is confiscated and lost to him because of the unsuspected and unanticipated wrong of the man with whom he contracted, with which wrong he had nothing whatever to do?

We wish now to discuss Boyd v. United States, 116 U. S. 616, 6 S. C. R. 524.

This is a case of great importance in this connection. It was a case of seizure and forfeiture in which the United States filed an information **in rem** against 35 cases of plate glass. The constitutionality of certain portions of the Act under which the proceedings were had was attacked.

The following is from Mr. Justice Bradley's statement of facts:

> "On the trial of the cause it became important to show the quantity and value of the glass contained in 29 cases previously imported. To do this the District Attorney offered in evidence an order made by the district judge under the fifth section of the same act of June 22, 1874, directing notice under seal of the court to be given to the claimants, requiring them to produce the invoice of the 29 cases. The claimants, in obedience to the notice, but objecting to its validity and to the constitutionality of the law, produced the invoice; and when it was offered in evidence by the district attorney they objected to its reception on the ground that, in a suit for the forfeiture, no evidence can be compelled from the claimants themselves, and also that the statute, so far as it compels production of evidence to be used against the claimants, is unconstitutional and void. The evidence be-

ing received, and the trial closed, the jury found a verdict for the United States, condemning the 35 cases of glass which were seized, and judgment of forfeiture was given. This judgment was affirmed by the circuit court, and the decision of that court is now here for review.

"As the question raised upon the order for the production by the claimants of the invoice of the 29 cases of glass, and the proceedings had thereon, is not only an important one in the determination of the present case, but is a very grave question of constitutional law, involving the personal security, and privileges and immunities of the citizen, we will set forth the order at large."

The constitutional question involved in the case at bar is quite as grave and involves the personal privileges and immunities of the citizen as vitally as did the constitutional question in the Boyd case.

Under the facts as above stated, the court in the head notes stated the principles involved as follows:

"1. The fifth section of the act of June 22, 1874, entitled 'An act to amend the customs revenue laws,' etc., which section authorizes a court of the United States, in revenue cases, on motion of the government attorney, to require the defendant or claimant to produce in court his private books, invoices and papers, or else

the allegations of the attorney to be taken as confessed, held to be unconstitutional and void as applied to suits for penalties, or to establish a forfeiture of the party's goods, as being repugnant to the fourth and fifth amendments of the constitution.

"2. Where proceedings were in rem to establish a forfeiture of certain goods alleged to have been fraudulently imported without paying the duties thereon, pursuant to the twelfth section of said act, held, that an order of the court made under said fifth section, requiring the claimants of the goods to produce a certain invoice thereof in court for the inspection of the government attorney, and to be offered in evidence by him, was an unconsitutional exercise of authority, and that the inspection of the invoice by the attorney, and its admission in evidence, were erroneous and unconstitutional proceedings.

"3. It does not require actual entry upon premises and search for and seizure of papers to constitute an unreasonable search and seizure within the meaning of the fourth amendment; a compulsory production of a party's private books and papers, to be used against himself or his property in a criminal or penal proceeding, or for a forfeiture, is within the spirit and meaning of the amendment.

"4. It is equivalent to a compulsory production of papers to make the non-production of

them a confession of the allegations which it is pretended they will prove.

"5. A proceeding to forfeit a person's goods for an offense against the laws, though civil in form, and whether in rem or in personem, is a 'criminal case' within the meaning of that part of the fifth amendment which declares that no person 'shall be compelled, in any criminal case, to be a witness against himself.

"6. The seizure or compulsory production of a man's private papers to be used in evidence against him is equivalent to compelling him to be a witness against himself, and, in a prosecution for a crime, penalty, or forfeiture, is equally within the prohibition of the fifth amendment.

"7. Both amendments relate to the personal security of the citizen. They nearly run into and mutually throw light upon each other. When the thing forbidden in the fifth amendment, namely, compelling a man to be a witness against himself, is the object of a search and seizure of his private papers, it is an 'unreasonable search an d seizure' within the fourth amendment.

"8. Search and seizure of a man's private papers to be used in evidence for the purpose of convicting him of a crime, recovering a penalty, or of forfeiting his property, is totally different

from the search and seizure of stolen goods, dutiable articles on which the duties have not been paid, and the like, which rightfully belong to the custody of the law.

"9. **Constitutional provisions for the security of person and property should be liberally construed.**"

We quote the following from the opinion:

"The seventh section of this act was in substance the same as the second section of the act of 1867, except that the warrant was to be directed to the collector instead of the marshal. It was the first legislation of the kind that ever appeared on the statute book of the United States, and, as seen from its date, was adopted at a period of great national excitement, when the powers of the government were subjected to a severe strain to protect the national existence."

R. S. 3450 is a part of the Act of 1866 which also was adopted at a period of great national excitement, when the powers of the government were subjected to a severe strain to protect the national existence.

Page 631:

"And any compulsory discovery by extorting the party's oath, or compelling the production

> of his private books and papers, to convict him of crime, or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of a despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom."

Is it not worse to forfeit one man's property for another man's illegal act, than it is to compel the production of a man's books to convict him of crime? If the latter procedure suits only persons of despotic power but cannot abide the pure atmosphere of political liberty and personal freedom, is not the former even more certainly in the same position?

The right not to be required to give evidence against one's self is not more sacred than the right not to be deprived of one's property without due process of law. Both are treated alike in the Constitution. The one is given protection equal with the other. The two are linked inseparably in the same sentence of the Constitution.

Justice Bradley then goes on to decide that the information in rem though technically civil, is in substance and effect a criminal proceeding, citing Coffey vs. United States, 116 U. S. 427 and holds that the Constitutional protection against being required to be a witness to convict one's self of crime equally protects one from being required to give evidence

where his property is sought to be forfeited. He then says that unconstitutional practices get their footing by silent approaches and slight deviations from legal modes of procedure.

Continuing.

> "This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be **obsta principiis.** We have no doubt that the legislative body is actuated by the same motives; but the vast accumulation of public business brought before it sometimes prevents it, on a first presentation, from noticing objections which become developed by time and the practical application of the objectionable law."

He then refers to Stockwell vs. United States, 3 Cliff. 284 and other cases and referring to Mr. Justice Clifford who participated in the Stockwell decision says:

> "The learned justice seemed to think that the power to institute such searches and seizures as the act of 1867 authorized, **was necessary to the efficient collection of the revenue,** and that no greater objection can be taken to a warrant to search for books, invoices, and other papers appertaining to an illegal importation than to one authorizing a search for the imported goods; and he concluded that, guarded as the new provision is, it is scarcely possible that the citizen can have any just ground of complaint. It seems to us that these considerations fail to meet the most serious objections to the validity of the law."

In other words, **the efficient collection of the revenue is not as important as the preservation inviolate of a man's constitutional rights.**

In the case at bar one of the contentions of opposing counsel in the lower Court was that without such a construction as the Court put on R. S. 3450 forfeitures of vehicles would be almost impossible; that owners of automobiles intending to use them in illegal transportation of whiskey would execute sham mortgages and bills of sale to confederates, which sham it would be difficult for the Government to prove.

But the complete reply is that it is far better for the Government to fail in many vehicle forfeiture cases than for one innocent owner to lose his prop-

erty; just as it is better for many guilty men to escape than for one innocent one to suffer.

It might be difficult to expose sham mortgages, but no litigant is ever relieved from a legal duty, by the fact that that duty is difficult.

Mr. Justice Bradley proceeds in the Boyd case:

> "In U. S. v. Mason, Judge Blogett took the distinction that, in proceedings in rem for a forfeiture, the parties are not required by a proceeding under the act of 1874 to testify or furnish evidence against themselves, because the suit is not against them, but against the property. But where the owner of the property has been admitted as a claimant, we cannot see the force of this distinction; nor can we assent to the proposition that the proceeding is not, in effect, a proceeding against the owner of the property, as well as against the goods; for it is his breach of the laws which has to be proved to establish the forfeiture, and it is his property which is sought to be forfeited; and to require such an owner to produce his private books and papers, in order to prove his breach of the laws, and thus to establish the forfeiture of his property, is surely compelling him to furnish evidence against himself. In the words of a great judge, 'Goods, as goods, cannot offend, forfeit, unlade, pay duties, or the like, but men whose goods they are.'"

The last quotation is most important. We have previously referred to it. It is a clear and distinct ruling that when the owner of the property is admitted as a claimant, the proceeding then becomes really a proceeding against the owner. It no longer exists as an **in rem proceeding,** and the ancient fiction **that the property itself is the offender,** is, so far as the claim cases are concerned (of which the case at bar is one), forever destroyed.

In the face of this ruling in the Boyd case, we are at a loss to understand how the Courts of Appeal and the District Courts have decided so many claim cases growing out of forfeitures on the theory that the property is treated as the offender. We are unable to see why these decisions are not contrary to the plain principle of the Boyd case.

Mr. Justice Bradley concludes as follows:

> "We find nothing in the decisions to change our views in relation to the principal question at issue. We think that the notice to produce the invoice in this case, the order by virtue of which it was issued, and the law which authorized the order, were unconstitutional and void, and that the inspection by the district attorney of said invoice, when produced in obedience to said notice, and its admission in evidence by the court, were erroneous and unconstitutional proceedings. We are of the opinion, therefore, that the judgment of the circuit court should be re-

versed, and the cause remanded, with directions to award a new trial; and it is so ordered."

The Boyd decision is one of the most noted ever handed down by the Supreme Court. We have forty U. S. Supreme Court citations of it and more than two hundred citations from other courts. Quotations from it cover a wide field, and Mr. Justice Bradley's observations concerning the articles in question of the Constitution and the danger of Congress or any State legislature being allowed to abridge them may now be considered as thoroughly established.

In Place vs. Norwich and N. Y. Transportation Co. 118 U. S. 468, Mr. Justice Bradley wrote the majority opinion and in the course of it said:

"To say that an owner is not liable, but that his vessel is liable, seems to us like talking in riddles. A man's liability for a demand against him is measured by the amount of property that may be taken from him to satisfy that demand. . . . It is true that in U. S. v. Mason, 6 Biss. 350, it was held that in a proceeding **in rem** for a forfeiture of goods the owner might be compelled to testify, because the suit is not against him, but against the goods. That decision, however, was disapproved by this court in the case of Boyd v. U. S., 116 U. S. 616, 637, in which it that the proceeding **in rem** is not, in a measure, is said: 'Nor can we assent to the proposition

> a proceeding against the owner of the property as well as against the goods; for it is his breach of the law which has to be proved to establish the forfeiture, and it is his property which is sought to be forfeited. In the words of a great judge: "Goods, as goods, cannot offend, forfeit, unlade, pay duty, or the like, but men whose goods they are."' "

In the Standard Oil case, 221 U. S. 1, Mr. Justice Harlan, concurring in part and dissenting in part, says:

> "After many years of public service at the National Capitol, and after a somewhat close observation of the conduct of public affairs, I am impelled to say that there is abroad in our land a most harmful tendency to bring about the amending of constitutions and legislative enactments by means alone of judicial construction. . . . Mr. Justice Bradley wisely said, when on this bench, that illegitimate and unconstitutional practices get their first footing by silent approaches and slight deviations from legal modes of legal procedure." Citing Boyd v. U. S.

In Wilson v. U. S. 221 U. S. 361, Mr. Justice McKenna in his dissenting opinion, says:

> "Neither plausible arguments, therefore, nor considerations of expediency should prevail

against or limit a principle deemed important enough to be made constitutional. Such a principle should be adhered to firmly. It is said in Boyd v. United States, 116 U. S. 616, that 'Constitutional provision for the security of person and property should be liberally construed. A close and a literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizens, and against any stealthy encroachment thereon. Their motto should be **obsta principiis.**'"

Further on in the same opinion:

"A limitation by construction of any of the constitutional securities for personal liberty is to be deprecated. A people may grow careless and overlook at what cost and through what travail they acquire even the least of their liberties. The process of deterioration is simple. It may even be conceived to be advancement and that intelligent self government can be trusted to adapt itself to occasions, not needing the fetters of a pre-determined rule. It may come to be considered that a constitution is the cradle of infancy, that a nation grown up may boldly advance in confident security against the abuses of power, and that passion will not sway more than reason. But what of the end when the

> lessons of history are ignored, when the barriers erected by wisdom gathered from experience are weakened or destroyed? And weakened or destroyed they may be when interest and desire feel their restraint. What, then, of the end? Will history repeat itself? And this is not a cry of alarm. **'Obstra principiis'** was the warning of Mr. Justice Bradley in Boyd v. U. S. against the attempt of the government to break down the constitutional privilege of the citizens by attempting to exact from them evidence of fraud against the custom laws. I repeat the warning. The present case is another attempt of the same kind, and should be treated in the same way."

It is submitted that although this quotation is from a minority opinion, the principles enunciated are sound.

In re Debs. 158 U. S. 564, Mr. Justice Brewer in delivering the opinion, said:

> "And we reaffirm the declaration made for the court by Mr. Justice Bradley in Boyd v. U. S. 116 U. S. 616, 635, 'It is the duty of courts to be watchful for the constitutional rights of the citizens, and against any stealthy encroachments thereon. Their motto should be obstra principiis.'"

In Monongahela Navigation Company v U. S., 148 U. S. 312, Mr. Justice Brewer gives approvingly the same quotation from Boyd v. U. S.

And this quotation is again repeated by Mr. Justice Brewer in his dissenting opinion in the case of Fong Yue Ting v. U. S., 149 U. S. 698.

And in Counselman v. Hitchcock, 142 U. S. 547, Mr. Justice Blackford in delivering the opinion of the court makes approvingly a much longer quotation from Boyd v. U. S., concluding with that last above quoted.

In Interstate Commerce Commission v. Brinson, 154 U. S. 447, Mr. Justice Harlan delivering the opinion of the court, said:

> "We said in Boyd v. U. S., 116 U. S. 616—and it can not be too often repeated—that the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the Government and its employees of the sanctity of a man's home and the privacies of his life."

In Fairbank v. U. S. 181 U. S. 283, Mr. Justice Brewer delivering the opinion of the court, again quotes approvingly from the Boyd case that part of the opinion referring to the duty of courts to be watchful for the constitutional rights of the citizens and against any stealthy encroachment thereon.

And this quotation is again given approvingly by Mr. Justice Harlan in the case of Maxwell v. Dow, 176 U. S. 581, and then goes on to say: "If some of

the guarantees of life, liberty and property which at the time of the adoption of the national constitution were regarded as fundamental and as absolutely essential to the enjoyment of freedom, and in the judgment of some cease to be of practical value, it is for the people of the United States so to declare by an amendment of that instrument."

The language of Judge Bradley that illegitimate and unconstitutional practices get their first footing by silent approaches, etc., is again quoted by Mr. Justice Brewer in delivering the opinion of the court in Gulf C. & S. F. Ry. Co. v. Ellis, 165 U. S. 150.

In Bram v. U. S., 168 U. S. 532, Mr. Justice White in delivering the opinion of the court, said:

> "In Boyd v. U. S., 116 U. S. 616, attention was called to the intimate relationship existing between the provision of the fifth amendment securing one accused against being compelled to testify against himself, and those of the fourth amendment protesting against unreasonable searches and seizures; and it was that case demonstrated that both of these amendments contemplated perpetuating, in their full efficacy, by means of a constitutional provision, principles of humanity and civil liberty which have been secured in the mother country after years of struggle, so as to implant them in our institutions in the fullness of their integrity, free from the possibilities of future legislative change."

It would seem that the principles of the fourth and fifth amendments are so elemental and so fundamental that they would never be questioned.

Why is it that this court has deemed it worth while so often to refer to these fundamental matters—so often to warn against any encroachment on these liberties? Is it not significant in the extreme? Are we not led to believe by the repeated reiteration of this warning that the highest court has found a strong tendency on the part of the Congress, as well as of the State legislature, to abridge these rights of the citizens and that this positively must not and shall not be done?

Congress, as well as the State, is swayed by the sentiment of the people at large. There has hardly ever existed in our country with reference to any one thing so violent, widespread, and thoroughly advertised a crusade as has sprung up within recent years against the liquor traffic and everything pertaining thereto. The States and the United States have attacked the whiskey business from every conceivable standpoint. The right to do away with the legal manufacture, transportation and sale of whiskey is undisputed, but if the case at bar is affirmed and if U. S. R. S. 3450 is held constitutional, will not, we respectfully submit, the citizen's constitutional rights for which this court has so strenuously stood during all these years, be seriously abridged and will not the principles enunciated by Mr. Justice Bradley in the Boyd case and so often

followed by this court, and so often restated by it, be disregarded?

Congress is without general police power. In a revenue act, as far as it can go in creating the machinery for the collection of its revenue is to provide for such means as are **reasonable and necessary** and **do not transgress fundamental constitutional rights.** There it must stop.

Forfeiture of the property of an innocent third person, equally with compelling a defendant to produce evidence against himself, is unreasonable and is a transgression of constitutional rights.

We earnestly submit that the case at bar cannot consistently be affirmed as long as the Boyd case stands.

Although Congress has no general police power, if it passes an act valid under any of its powers, "no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the exercise by a State of its police power, or that it may tend to accomplish a similar purpose." Mr. Justice Brandeis in Hamilton vs. Kentucky Distilleries 40 S. C. R. 106, 108.

**But Congress must have had the power to pass the Act.** If its object and effect is that of an exercise of the police power only, it is void.

In U. S. vs. Doremus 246 Fed. 958 the District Court held the Harrison Narcotic Act void for this reason. But the Supreme Court (249 U. S. 86, 39 S. C. R. 214), reversed the District Court on the ground that the provisions which the latter Court had found objectionable could be supported as being aids to the United States in the collection of its revenue. The Court said: "Considering the full power of Congress over excise taxation, the decisive question here is, have the provisions in question **any relation to the raising of revenue?**"

Clearly this is the decisive question in the case at bar.

The Court proceeds: "Congress, with full power over the subject, **short of arbitrary and unreasonable action** which is not to be assumed, inserted these provisions in an act specifically providing for the

raising of revenue. Considered of themselves, we think they tend to keep the traffic above board and subject to inspection by those authorized to collect the revenue. They tend to diminish the opportunity of unauthorized persons to obtain drugs and sell them clandestinely without paying the tax imposed by the federal law."

The provisions were accordingly upheld.

This presents in a nutshell the decisive question in the case at bar.

The Act of 1866 being an Act for raising revenue and Congress having no police power, can the forfeiture of the innocent owner's title to a vehicle used for transportation of untaxpaid liquors be justified as a necessary aid to the collection of the revenue, which aid is also **neither arbitrary nor unreasonable**?

We do not think the question requires argument beyond its statement. That such forfeiture is **not** a necessary aid to the collection by the Government of its taxes, and that it is both arbitrary and unreasonable, we think goes without saying.

If the Supreme Court in the Doremus case had not been able to decide that the provisions of the act to which Doremus objected tended to keep the traffic in narcotics open and aboveboard and more easily capable of inspection by the collectors, as well as to diminish the opportunity of unauthorized persons to obtain the drugs and sell them clandestinely with-

out paying the tax imposed by the federal law, unquestionably it would have held the provisions void.

Those provisions were not a violation of any rights of innocent third persons, and they were direct aids to the Government in the collection of its opium taxes.

Undoubtedly Congress can provide any aids to the collection of its taxes which do not interfere with fundamental rights; but it cannot trespass on the latter.

Undoubtedly automobiles are frequently used in the transportation of untaxpaid liquors. Such a vehicle, noiseless and speedy as it is, is peculiarly adapted to such illegal operations. The tremendous increase in production of automobiles and their distribution into every part of the country has undoubtedly been a tremendous hindrance to the Government in its efforts to collect its taxes on liquors. Undoubtedly, therefore, it would be a great aid to the Government if Congress would entirely prohibit the further manufacture and use of automobiles. If all use of automobiles was stopped by all persons, it would be an immense service to the Government in its efforts to collect its whiskey taxes. But the most zealous advocate of Governmental rights would hardly suggest that Congress could go that far. He would be unbalanced mentally, if he did.

Yet, from a standpoint of pure reason, would such legislation be much if any more unreasonable, than the proposition enunciated by R. S. 3450 to every owner of an automobile in the United States: "Every time you part with the possession of your car you do so at your peril. If you lend it to a friend, send it out on your private business through an agent, or turn it over to a prospective buyer, you shall lose it if it be put to an illegal use. It will make no difference how innocent you are, how much care you take in the selection of your friends, agents, employees or buyers, if he abuses your trust, I, the Government, will forfeit your car."

We submit in all seriousness, if Congress, through the guise of an aid to the collection of revenue can say that (and it has said it, if R. S. 3450 is to be strictly construed), can it not say, "It will aid in the collection of whiskey taxes to do away with automobiles altogether, therefore their manufacture, possession and use shall hereafter be unlawful?"

The proposition above referred to that an act of Congress, no matter what its form, that has the effect of a police regulation, is void unless it is a **reasonable aid** in carrying into effect an acknowledged power of Congress, has been so often recognized that it is unnecessary to discuss it.

A well known case is U. S. vs. Dewitt 9 Wall. 41 in which the naptha and oil section of the Revenue Act of 1867 was held unconstitutional. The Court

concluded that the only possible relation the section could have to taxation was too remote.

The Chief Justice: "This consequence is too remote and too uncertain to warrant us in saying that the prohibition is **an appropriate and plainly adapted means** for carrying into execution the power of laying and collecting taxes."

This is the entire principle. The sole question involved here is this: If 3450 is to be so construed as to demand a forfeiture of the vehicle of an innocent owner, free from negligence, when used by another person to transport untaxpaid liquors, is that provision **an appropriate and plainly adapted means** for carrying into execution the congressional power of laying and collecting taxes? If it is, the section is constitutional. If it is not, the section is unconstitutional.

To punish relentlessly all tax frauds is certainly a plainly adapted means to deter others from committing them. To put the wrongdoer in jail is undoubtedly not too severe a punishment, to confiscate his liquors, while going a step farther, is also undoubtedly a proper act, to seize and forfeit his horses or his vehicle which he used in the illegal attempt, while going a step still farther, can hardly be considered inappropriate. But how about seizing and forfeiting a vehicle **belonging to some one else** and which was illegally used by the criminal without the owner's knowledge, consent or negligence, and perhaps, in violation of his positive commands? Is

such an act as that an appropriate means to assist the collection of revenue?

We are told that in days of old when a "Craig-baron" caught an enemy, he not only murdered him, but in a riot of vengeance assassinated his women, children and domestic servants and razed his castle as well. Yet the women, children, servants and castle had never harmed him, and clearly should have been spared the punishment meted out to the enemy himself.

When the Craig-baron committed his sweeping act of blood and iron, he did it largely to deter any other human being from ever again offending him. But we submit, he went a little too far. We think it pretty clear that he invaded the constitutional rights of the women, children and servants who had done him no wrong.

Is there not just a little relic of the spirit of the Craig-baron in 3450? Has not the property of the innocent plaintiff-in-error in the case at bar, who has done no wrong whatsoever, been assassinated in somewhat of that spirit?

In Connecticut there was a statute requiring vehicles to turn to the right on meeting other vehicles; a penalty of triple damages was recoverable for violation and it was further provided: "And the owner of such vehicle shall, if the driver is unable to do so, pay the damages provided in this and the preceding section." In Camp v. Rogers, 44 Conn. 291 this statute was attacked as unconstitutional.

The court so held, saying, "If the construction which the plaintiff contends should be given to the statute upon which her right to recover must depend, then there can be no case in which the owner of a vehicle would not be liable not only for the actual damage caused by a violation of the statute on the part of any person driving it, but for the threefold and punitive damages given by the statute against the driver. If the owner of a vehicle should leave it, with his horse attached to it, at a post by the side of the street, and in his absence a thief or trespasser should take it and by reckless driving damage a horse or carriage that he happened to meet, the owner would be liable. So if one lends his vehicle to a friend, and he again lends it to a stranger, the owner would be liable not only for any damage done by the stranger in driving it, but even by the servant of the stranger. Indeed, we would have this strange anomaly,—that, if any neighbor borrows my carriage and is riding in it with his servant, and the latter wilfully neglects to turn to the right, and injures a team that he meets, while my

neighbor would not be liable as master, because the act of his servant was wilful, I should yet be liable as owner, and that, too, with no right to indemnity from the master. Such a result is in itself so absurd as to show either that the statute ought not to be so construed as to produce it, or that, if this be a correct construction, it is so far void, either as manifestly against natural justice, or as violating that article of the Constitution which forbids the taking away of any person's property 'without due process of law.' If such a law, so constructed, were to be held valid, then a law that should by a merely arbitrary rule make one man liable for the debts of another would be valid. Indeed, there is no limit that could be put to the most arbitrary acts of the legislature in making one man liable for the acts of another. As to the meaning of the expression, 'due process of law,' as used in many of the Constitutions of the states of the Union, Cooley, in his Constitutional Limitations, page 355, says: 'We have met in no judicial decision a statement that embodies more tensely and accurately the correct view of the principle we are considering than the following from an opinion of Mr. Justice Johnson of the Supreme Court of the United States: "The good sense of mankind has at length settled down to this, —that these words were intended to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice." Again, he says (page 358), speaking of the cases where courts of equity order the property of one

man to become vested in another; 'In these cases the courts proceed in accordance with "the laws of the land," and the right of one man is divested by way of enforcing a higher and better right in another.' Again, he says (page 175): 'The bills of rights in the American Constitution forbid that parties shall be deprived of property, except by the law of the land; but, if the prohibition had been omitted, a legislative enactment to pass one man's property over to another would nevertheless be void.' In the People v. Morris, 13 Wend. 328, it is said that, 'vested rights of the citizens are sacred and inviolable against the plenitude of power in the legislative department.' In Ham v. M'Claws, 1 Bay, 93, it is laid down that, 'statutes passed against the plain and obvious principles of common right and common reason are null and void, so far as calculated to operate against those principles;' and in Morrison v. Barksdale, Harp. L. 101, that, 'if absurd consequences, or those manifestly against common reason, arise collaterally out of a statute, it is pro tanto void.' And see Welch v. Wadsworth, 30 Conn. 150, 79 Am. Dec. 239."

In Mugler v. Kansas, 123 U. S. 623, 661; 8 S. C. R. 237, 297 when the Kansas prohibition act was attacked, this court said, "If, therefore, a statute purporting to have been enacted to protect the public

morals, or the public safety, has no real substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

These expressions applied to the exercise of State powers are in principle applicable also to Congressional powers. Applied to the case at bar they may be thus paraphrased: "If, therefore, an Act of Congress purporting to have been enacted to aid the Government in collecting taxes due on whiskey, has no real or substantial relation to that object **or is a palpable invasion of rights secured by the fundamental law,** it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

The act of 1866 being nothing but a tax act, was passed by authority of the first provision in Section 8 of Article 1 of the Constitution: "The Congress shall have power—to lay and collect taxes, duties, imports and excises; to pay the debts and provide for the common defense and general welfare of the

United States." The generally accepted interpretation of this clause is that it is to be read as if it declared that "Congress shall have power to lay and collect taxes, etc., **in order** to pay the debts and provide for the common defense and general welfare of the United States." 37 Cyc. 717; Black, Const. L. (3rd Ed.), 207; 1 Story Const. Section 907-921.

Conditions existing at the date of an act are always to be considered in construing its provisions. "The old law, the mischief and the remedy," is the familiar phrase. In 1866, the manufacture, transportation and sale of whiskey, under regulation, was permitted in probably every State in the Union. Modern prohibition was unknown. The right to make whiskey and sell it, all under regulation, was not questioned. Each year an immense revenue flowed into the treasury on account of this commerce.

Many individuals desiring to increase their own profits, sought to defraud the Government of the taxes sought to be collected on it. "Moonshining" existed almost everywhere and was exceedingly difficult, expensive and dangerous to deal with.

To assist the officers of the Government in the **collection of the taxes due** and for no other purpose, this provision of the Act of 1866 was passed.

Again: In those days, the immense business now existing everywhere of selling personalty on credit

under title-retention contracts was practically unknown. In 1866 probably very few vehicles used in illegal transportation of whiskey was so employed by persons other than the owners or their agents or employees. The great wrong which now results to automobile dealers if 3450 is strictly construed and enforced could not have been remotely contemplated. Automobiles had not even been invented.

In the first sentence of 3450 its applicability is specifically limited to cases of **tax frauds.** There is no general welfare matter in it. Its sole object is to deter persons from attempting to defraud the Government of taxes lawfully due.

There must first be "goods or commodities for or in respect whereof any tax is or shall be imposed . . . " etc. Then they must be "removed . . . with the intent to defraud the United States of such tax . . . " When t[illegible] is done, the fraud is complete and the penalty at[illegible]aches.

It is the collection of the tax, the Government is after, and in order to get these taxes the more surely, to penalize tax frauds.

That is all there is in it.

This demonstrates, it seems to us, that the forfeiture of "every . . . conveyance whatsoever" used in the removal or concealment of the untaxpaid goods, is, as heretofore stated, when the title to the

vehicle so used illegally is in an innocent owner, a seizure of the property of A for a tax owed and a fraud committed by B. We can see no escape from this proposition.

It is very important to bear in mind that in the first two sentences of 3450, down to the words "and all boilers," **there is no reference to liquors or anything used in their manufacture.** The first portion is Section 14 of the Act of 1866. The part beginning "And all boilers . . . " does not appear in the Act until several pages later—in Section 44.

The opening words of 3450, then: "Whenever **any goods or commodities,** applies to **all the goods and commodities,** dealt with in the entire Act. Cotton is so dealt with. Coffee is so dealt with. They are "goods and commodities" within the meaning of 3450. The all-embracing words "goods and commodities" are used no less than five times in these first two sentences of 3450. But the word "liquor" is not referred to.

Under 3450, if A removed cotton or coffee with intent to defraud the Government of the tax due thereon, the vehicle so used would be forfeited.

Tax frauds in connection with such things as cotton and coffee are much rarer than tax frauds in connection with whiskey.

Could it ever be contended that the prevention of tax frauds on coffee and cotton, required as an aid to the collection of the revenue due such a drastic provision as the forfeiture of a vehicle owned by an innocent person where it was used in transporting the untaxpaid cotton or coffee?

Yet 3450 applies to such a vehicle as surely as it does to a vehicle used to transport whiskey.

The fundamental principle is that the provision is void, unless it is a reasonable and necessary aid to the collection of revenue.

Applying to cotton and coffee, as the objectionable features of 3450 do, if they are unreasonable and void as to cotton and coffee, they are void as to whiskey.

It in interesting to note that in this tax act of 1866 there is a special provision for forfeiture of **"all vessels and vehicles"** used in the removal of untaxpaid cotton.

See Section 5 of the Act, 14 U. S. Statutes at Large page 99.

If U. S. R. S. 3450 is constitutional and is construed to forfeit a title retained as security for purchase money, it will practically prohibit automobile dealers selling their cars except for cash. It is matter of common knowledge that, in these days, by far the largest part of our commercial transactions is on

credit. But if this section stands and is enforced as it was by the lower court, in the case at bar, any seller of an automobile on credit will be at the mercy of the morals of his buyer. An immense business, that of dealing in automobiles on credit, will be done away with, and the freedom of contract will be curtailed to an extent we can hardly realize.

## THE LIABILITY-WITHOUT-FAULT CASES.

When the state legislatures began to pass Workmen's Compensation Laws and to provide in certain cases that employers should pay compensatory damages although they might be free from negligence, the objection at once arose that this was taking a man's property without due process of law.

The cases although arising under acts passed by the State under their police power, contain valuable substance in a study of the case at bar, for the limit to which a State can go in the exercise of its police power is the same limit to which Congress can go in providing aids to the Government in collecting its revenue; to-wit, an unreasonable and unnecessary interference with private rights. There, both the State and Congress must stop.

In these liability-without-fault acts, the State legislatures under the police power have probably gone farther than ever before to be upheld by courts. At first view, the acts seem clearly to amount to the taking of a man's property without due process; although even that is a far cry from the proposition involved in the case at bar, namely, the punishment of A for a crime of B.

But an examination of the Workmen's Compensation Cases, shows clearly that the Court has never

yet gone to such an extent as will be necessary to affirm the case at bar.

The latest and most far-reaching of these decisions is Arizona Copper Co. v. Hammer, 250 U. S. 400, 39 S. C. R. 553, decided June 9th, 1919.

By a Court divided five to four, the Constitutionality of the Arizona Employer's Liability Act, was upheld against the attack made on it that it deprived the employer of his property without due process of law. In this case as above indicated the Court went farther in sustaining the right of a State legislature to pass an Act fixing liability in absence of negligence, than it had ever previously done.

All through this Arizona Copper Co. case it appears to us that the majority of the court is reaching its conclusion with reluctance. The fundamental principle underlying the decision seems to be that as the common law requires the employee to assume responsibility where no one was at fault and the injury was accidental, the legislature in cases of hazardous employments had the power to shift this burden to the employer who might relieve himself of it by a lower scale of wages or a higher price to his consumer for his product.

The clear import of the decision is that the rule shall not be extended to non-hazardous employments.

Mr. Justice Pitney in the course of the majority opinion says: "There is no question here of punish-

ing one who is without fault, that we may concede, would be contrary to natural justice."

Yet that is precisely what has been done in the case at bar. Plaintiff-in-error has been punished for a fault committed by another.

Mr. Justice Pitney says further: "The statute requires that compensation shall be paid to the injured workman or his dependents, because it is upon them that the first brunt of the loss falls; and that it shall be paid by the employer, because he takes the gross receipts of the common enterprise, and by reason of his position of control can make such adjustments as ought to be and practically can be made, in the way of reducing wages and increasing the selling price of the product, in order to allow for the statutory liability. There could be no more rational basis for a discrimination; and it is clear that in this there is no denial of the 'equal protection of the laws.'"

"Under the 'due process' clause, the ultimate contention is that men have an indefeasible right to employ their fellow men to work under conditions where, as all parties know, from time to time some of the workmen inevitably will be killed or injured, but where nobody knows or can know in advance which particular men or how many will be victims, or how serious will be the injuries, and hence no adequate compensation can be included in the wages; and to employ them thus with the legitimate object

of making a profit above their wages if all goes well, but with immunity from particular loss if things go badly with the workmen through no fault of their own, and they suffer physical injury or death in the course of their employment. In view of the subject-matter, and of the public interest involved, we cannot assent to the proposition that the right of life, liberty, and property guaranteed by the Fourteenth Amendment prevent the states from modifying that rule of the common law which requires or permits the workingman to take the chances in such a lottery.

"The act—assuming, as we must, that it be justly administered—adds no new burden of cost to industry, although it does bring to light a burden that previously existed, but perhaps was unrecognized, by requiring that its costs be taken into the reckoning. The burden is due to the hazardous nature of the industry, and is inevitable if the work of the world is to go forward. What the act does is merely to require that it shall be assumed, to the extent of a pecuniary equivalent of the actual and proximate damage sustained by the workman or those near to him, by the employer—by him who organizes the enterprise, hires the workmen, fixes the wages, sets a price upon the product, pays the costs, and takes for his reward the net profits, if any."

That is, undoubtedly, the basis of the decision. But no such basis exists in the case at bar. There is involved here no question of a hazardous although necessary business in which persons must be em-

ployed and in the conduct of which some will inevitably be injured. There is no question of a statutory shifting of a purely civil burden imposed by the common law on one set of men to another set of men.

In the buying and selling of automobiles, in the use of an automobile for the transporation of liquor, there is no such principle involved.

Under the common law, each man is responsible for his own frauds and his own crimes. A man's constitutional rights protect him from being punished for the fraud of another. Yet that is precisely what 3450 has done in this case. If 3450 is held constitutional, it seems to us the principle of the Arizona Case will have to be extended from a legislative power to shift a purely civil responsibility which must be borne by some one, inconceivably further, to-wit, to a power to confiscate one man's property for another's crime.

Such a proposition is unthinkable. If it can be done, is seems to us the Constitution had as well be wiped out.

In the Arizona Case Mr. Justice McKenna dissented with reluctance, frankly admitting his fear that the rule in future cases might be still further extended. We gather from what he said, that he thought the only safe thing to do was to rest the matter on the Workmen's Compensation Law of New York case, 243 U. S. 203 and its associated cases,

draw the line exactly there, and refuse to go further. "Therefore to me," he says, "the present case is a step beyond them. I hope it is something more than timidity, dread of the new, that makes me fear that it is a step from the deck to the sea—the metaphor suggests a peril in the consequences."

We do not think the court will be diveded upon the question of the extent of the peril that will be involved in deciding that either a state legislature or congress can in any case whatsoever take property of A because of a fraud or crime committed by B.

Mr. Justice McKenna further says: "It seems to me to be of the very foundation of right—of the essence of liberty as it is of morals—to be free from liability if one is free from fault. It has heretofore been the sense of the law and the sense of the world, pervading the regulations of both, that there may be no punishment where there is no blame." "There are precepts of constitutional law as there are precepts of moral law, that reach the conviction of aphorisms and are immediately accepted by all who understand them, and comment is considered as confusing as unnecessary. I say this, not in dogmatism, but in expression of my vision of things, and I say it with deference to the contrary judgment of my brethren of the majority."

Mr. Justice McReynolds says in his dissenting opinion: "In the last analysis it is for us to determine what is arbitrary or oppressive upon considera-

tion of the natural and inherent principles of practical justice which lie at the base of our traditional jurisprudence and in spirit our Constitution. A legislative declaration of reasonableness is not conclusive; no more so is popular approval—otherwise constitutional inhibitions would be futile. And plainly, I think, the individual's fundamental rights are not proper subjects for experimentation; they ought not to be sacrificed to questionable theorization." In the majority opinion the court said: "But, as we have seen, the statute limits the recovery to compensatory damages." That statement follows immediately the one above quoted that to punish one without fault would be contrary to natural justice.

Yet the statute, attacked in the case at bar, has nothing whatever to do with any compensatory matter. The unpaid tax on the liquors removed may be $1, and the value of the automobile seized and forfeited may be $5,000. As matter of fact, in the case at bar, the value of the interest of plaintiff-in-error in the automobile forfeited was greatly in excess of the amount of the liquor tax of which Thompson had attempted to defraud the Government.

When the Court said: "There is no question here of punishing one who is without fault. That, we may concede would be contrary to natural justice. But, as we have seen, the statute limits the recovery strictly to compensatory damages," it ruled that to allow purely compensatory damages against an employer under such conditions as existed in that case

was not considered as infringing the fundamental principle that one without fault is not to be punished. This principle was recognized as existing in inherent natural justice. But what is to be said of a proposition which allows the seizure and forfeiture of a property worth $5,000 belonging to one man because of a $1 tax owed by another man?

The only alternative of compensation is punishment. The reason why a penal law authorizes a fine of, say, $100, for larceny of, say 50 cents, is punishment, not compensation.

Even in the Arizona Case four of the nine Justices evidently thought the ruling adopted was tantamount to a punishment of one without fault and was contrary to natural justice. What can now be said of the principle involved in the case at bar? A attempts to defraud the Government of a few dollars taxes, and property worth perhaps thousands of dollars belonging to B, who not only did not participate in the fraud but did not even know it was being perpetrated, is forfeited.

An attempt has been made to justify these forfeitures on the idea that an owner by consenting to the possession of his car by another thereby puts it in the power of that other to commit the fraud. That is one point the Circuit Courts of Appeal use to distinguish the rule which shall apply to loaned or partially paid for vehicles. But it is obvious this

mere consent to possession cannot justify a forfeiture.

Suppose A gives a knife to B, to take it and have it sharpened, and B cuts a man's throat with it. Is A to be punished? Yet in the Mincey case, 254 Fed. 288, Mincey intrusted his car to a hired man to go to town for lawful merchandise. The employee used the car to haul untaxpaid whiskey and it was forfeited. How can that be justified?

A crime may be committed with almost any chattel. A may give so innocent a thing as an apple to B, and B may commit an assault and battery with it. In just as true a sense as that Mincey put it in the power of his hired man to commit the tax fraud. A, in that illustration, would have put it in the power of B to commit the assault and battery with the apple. The argument will not hold. It cannot be said that the mere entrusting of possession of a chattel, inherently of an innocent nature, to another who is apparently a lawabiding citizen, warrants the punishment of the owner by forfeiture of his property if the one entrusted misuses the property.

The consent to possession of certain chattels which are in their nature usable only for unlawful purposes (see the cases involving roulette wheels and other gambling devices), turn on a principle involved only in those cases; that the owner knows the property in all human probability is to be used for an illegal purpose. That principle has nothing to do with the case at bar.

In Michigan there was passed an act providing that the owner of an automobile should be liable for the negligent operation of it by **any person.** In Loehr v. Abell, 140 N. W. 926, the car was being driven by the owner's son and killed a man. The Court: "It is to be inferred that the son used the car by permission of his father, the owner, but for his own pleasure." The act was held void.

The first case in which the Supreme Court was called upon to pass upon the constitutionality of a Workmen's Compensation law fixing liability on an employer who was without fault appears to be New York Central v. White, 243 U. S. 188, 37 S. C. R. 247. In that case the law provided that the employee might secure the payment of the compensation by insurance, the recovery was compensatory only, and pain had to be borne by the employee alone, the statute making no attempt to afford an equivalent in compensation.

The attack on the statue was resisted on the ground, quoting from Mr. Justice Pitney, "That the whole common law doctrine of employer's liability for negligence, with its defences of contributory negligence, fellow-servant's negligence, and assumption of risk, is based upon fictions, and is inapplicable to modern conditions of employment."

Apparently the Court agreed with this contention.

We submit that the ancient fiction that the thing is the offender, upon which modern forfeiture decisions rest, is no longer reasonable and is inapplicable to modern conditions in the business world.

The rule of reason runs through this decision. Everywhere the court is showing that the law is neither arbitrary, unjust, oppressive, unnecessary, nor unreasonable. Clearly if it had appeared that it was arbitrary, unjust, oppressive, unnecessary, or unreasonable, it would have been declared unconstitutional. Yet R. S. 3450 as applied to the case at bar is open to all of these criticisms.

Mr. Justice Pitney in this case says, referring to loss of earning power by accident, "This is a loss arising out of the business, and, however it may be charged up, is an expense of the operation, as truly as the cost of repairing broken machinery or any other expense that ordinarily is paid by the employer. Who is to bear the charges? It is plain that, on grounds of natural justice, it is not unreasonable for the state, while relieving the employer from responsibility for damages measured by common-law standards and payable in cases where he or those for whose conduct he is answerable are found to be at fault, to require him to contribute a reasonable amount, and according to a reasonable and definite scale, by way of compensation for the loss of earning power incurred in the common enterprise, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance

to fall, that is, upon the injured employee or his dependents. Nor can it be deemed arbitrary and unreasonable, from the standpoint of the employee's interest, to supplant a system under which he assumed the entire risk of injury in ordinary cases, and in others had a right to recover an amount more or less speculative upon proving facts of negligence that often were difficult to prove, and substitute a system under which, in all ordinary cases of accidental injury, he is sure of a definite and easily ascertained compensation, not being obliged to assume the entire loss in any case, but in all cases assuming any loss beyond the prescribed scale."

There was no dissent in the first of these Workmen's Compensation Cases, New York Central v. White. In the Mountain Timber Case, 243 U. S. 219, decided the same day, there was dissent by the four Justices who dissented in the later Arizona case. In the Mountain Timber case the Washington law compelled the employer to make contribution to a state fund whether his own men were injured or not. As one noted writer has remarked, "Under the Washington Act, however prudently the employer may manage his own business, even to the point of immunity to his employees from accidental injury or death, he nevertheless is required to make a periodical contribution to a fund for making compensation to the injured employees of possibly negligent competitors. This would, indeed, seem a hardship upon a man who is the more careful."

We suppose this provision occasioned the divided court in this case inasmuch as it was not divided in the New York case.

The Mountain Timber and Arizona Cases went one step further than the New York Central case, which step Mr. Justices McKenna, Van Devanter, McReynolds and Chief Justice White declined to take. Again we respectfully submit that to uphold the constitutionality of R. S. 3450 will require the Court to take still another step, and one immeasurably more far-reaching than the difference between the New York Central and the Arizona cases.

The upshot of this situation is that in these employer's liability cases the farthest the court has ever gone, and it has gone even that far with reluctance and with a division of opinion, is to hold A responsible under certain well defined circumstances for a compensation to be paid to B, **where neither** was at fault.

But in the case at bar the court is asked to uphold a law which imposes a penaltiy on A, who is wholly innocent, for a deliberate, wanton and illegal act of B. As before stated it is a liability sought to be imposed on an innocent man for the crime of another—nothing more nor less.

We ask attention to the further statement of Mr. Justice Pitney in N. Y. Central v. White relative to the cases of Ives v. South Buffalo Ry. Co. 201 N. Y. 271 and Jensen v. S. P. Co. 215 N. Y. 514.

In the Ives case, the Court of Appeals of N. Y. held unconstitutional the act of the legislature then in force, the 3rd head note being as follows: "An attempt to make an employer liable for an injury to an employee, arising out of a necessary risk or danger of the employment, or one inherent in the nature thereof, without fault on the part of the employer, unless it was caused by a serious and wilful misconduct of the employee, is an unconstitutional taking of liberty and property without due process of law."

After this decision, the state adopted a constitutional amendment and then there was passed the Act of 1913 which was attacked as unconstitutional in Jensen v. So. P. Co. The court there held the act of 1913 constitutional, as it was held by the Supreme Court in the N. Y. Central case, but distinguished it from the Ives case on the ground that the latter act distributed the burden equitably over the industries affected and by creation of a state insurance fund, or by the substitute methods provided, it insured the prompt receipt by the injured employee or his dependants of a certain sum undiminished by the expenses of litigation.

Now there is, in the instant case, no question of distribution and therefore the force of the decision in Ives v. South Buffalo holding the first act void has not been affected by the ruling of the Supreme Court in the New York Central case.

We request the attention of the court to this Ives decision. We think the reasoning directly applicable to the instant case.

In N. Y. Central Ry. v. Bianc 40 S. C. R. 44 this Court had before it an attack on the constitutionality of an amendment to the workmen's compensation law of N. Y. The Court held that the amendment was not "unreasonable, arbitrary, or contrary to fundamental right." Again by implication expressing the general principle that had the amendment been considered "unreasonable, arbitrary or contrary to fundamental right," it would have been held unconstitutional.

It has been suggested that it is not necessary to construe R. S. 3450 to mean that the title of an innocent owner is not forfeited and not necessary to hold it unconstitutional; that plaintiff-in-error can be protected in two ways:

1st, by action against the wrongdoer.

2nd, by application to the Secretary of the Treasury to remit the forfeiture.

As to the first, it is not probable that such a wrongdoer would be either accessible or able to respond in damages. We were entitled to hold the title to our automobile as security for our purchase money debt. We contend that the Government had no right to destroy that security on account of the act of a

wrongdoer with whom we had nothing to do. The Government cannot take away our property right and leave us to an unsecured common-law action against a criminal.

As to the second, the power of the Secretary of the Treasury to remit forfeitures is in the nature of a pardoning power and may be granted or withheld at pleasure.

We are not and cannot be required to stand upon any such thing as pardoning power. We are not in the position of a criminal who has had justice go against him and who is pleading for mercy. We are not asking for mercy, not seeking for a pardon which may be held out at the will of an executive, but we are standing squarely and confidently upon inherent constitutional rights.

Respectfully submitted,

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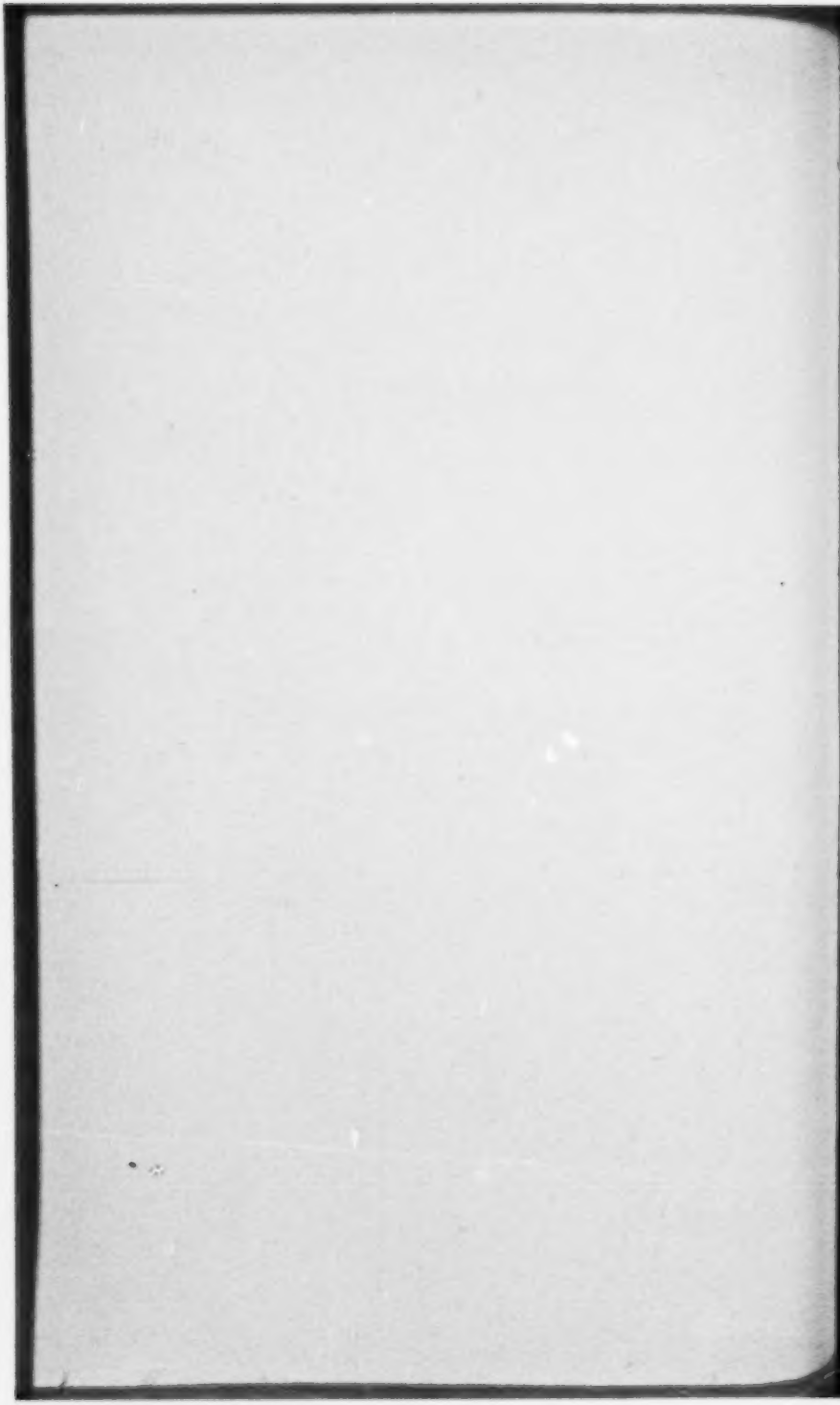
## CASES CITED.



# In the Supreme Court of the United States.

OCTOBER TERM, 1920.

J. W. GOLDSMITH, JR.—GRANT CO., plaintiff in error,
*v.*
THE UNITED STATES OF AMERICA, defendant in error.
} No. 214.

## BRIEF FOR THE UNITED STATES.

This case is here on writ of error to the United States District Court for the Northern District of Georgia to review a judgment of forfeiture of an automobile alleged to have been used by one Thompson to transport liquor upon which tax had not been paid.

Plaintiff in error claims an interest in the said car, which it had sold to Thompson and another under a retention-title contract, and contends (1) that section 3450, Revised Statutes, should be construed to authorize the forfeiture only of the interest of the offending party therein, and not the title of the innocent owner; and (2) that if said section can not be so construed it must be held to be unconstitutional as authorizing the taking of property without due process of law.

## Statutes Involved.

Section 3450, Revised Statutes, reads as follows:

> [*Removing or concealing articles with intent to defraud United States of tax—forfeiture and penalty.*]—Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, or any materials, utensils, or vessels proper or intended to be made use of for or in the making of such goods or commodities are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, and all such materials, utensils, and vessels, respectively, shall be forfeited; and in every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited. And every person who removes, deposits, or conceals, or is concerned in removing, depositing, or concealing any goods or commodities for or in respect whereof any tax is or shall be imposed, with intent to defraud the United States of such tax or any part thereof, shall be liable to a fine or penalty of not more than five hundred dollars. And all boilers, stills, or other vessels, tools, and implements used in distilling or rectifying, and forfeited under any of the provisions

of this title, and all condemned material, together with any engine or other machinery connected therewith, and all empty barrels, and all grain or other material suitable for distillation, shall, under the direction of the court in which the forfeiture is recovered, be sold at public auction, and the proceeds thereof, after deducting the expenses of sale, shall be disposed of according to law. And all spirits or spirituous liquors which may be forfeited under the provisions of this title, unless herein otherwise provided, shall be disposed of by the Commissioner of Internal Revenue as the Secretary of the Treasury may direct.

This section was taken from section 14 of chapter 184 of the act of July 13, 1866 (14 Stat. L. 151). A similar forfeiture provision for violation of customs laws which was taken from section 3 of chapter 201, of the act of July 18, 1866 (14 Stat. L. 178), is found in section 3062 Revised Statutes and reads as follows:

[*Forfeitures*].—Every such vehicle and beast, or either, together with teams or other motive power used in conveying, drawing, or propelling such vehicle or merchandise, and all other appurtenances, including trunks, envelopes, covers, and all means of concealment, and all the equipage, trappings, and other appurtenances of such beast, team, or vehicle shall be subject to seizure and forfeiture. If any person who may be driving or conducting, or in charge of any such carriage or vehicle or beast, or any person traveling, shall willfully refuse to stop and allow search and examina-

tion to be made as herein provided, when required so to do by any authorized person, he shall be punished by a fine of not more than one thousand dollars, nor less than fifty dollars.

## BRIEF.

**By a long line of decisions it has been established that the forfeitures authorized by these two statutes are absolute and include the interest of an owner who was not a participant in the illegal acts which effected the forfeiture, and had no knowledge of them.**

One of the earliest reported cases interpreting section 14 of the act of July 13, 1866, is *United States* v. *Two Horses*, 28 Fed. Cases 16578, in which the District Court of the Eastern District of New York, in 1878, held that in a proceeding in rem against a truck and two horses alleged to have become forfeited by virtue of their use in transporting spirits contrary to law, evidence that the owner of said truck and horses had no knowledge of the fraud intended, was immaterial, saying:

> That it is competent to forfeit property by reason of its use in facilitating fraud without any guilty intent upon the part of the owner, has been settled by repeated decisions. * * * The reason why this express provision was made in respect to the forfeiture of things used in removing spirits contrary to law was to limit the fate of the vehicle with that of the articles conveyed, in order to deter parties from putting their vehicles at the disposal of those who would be likely to use them for purposes of fraud.

The court in this case also called attention to the fact that the statute provides for the forfeiture of the casks containing liquor, and said that Congress could not have intended that the knowledge of the owner of the casks was necessary to authorize their forfeiture, and by the same reasoning they did not intend forfeiture of vehicle, etc., to depend upon the knowledge of the owner thereof.

In 1888, the District Court for the Western District of North Carolina held in *United States* v. *Two Bay Mules*, 36 Fed. 84, where there was a seizure of a wagon and two mules which had been rented to one York, who used them for the transportation of liquor contrary to law, that it was immaterial that the owner had no knowledge of the unlawful use of his property, and that they were subject to forfeiture, having come lawfully into the possession of York. It was said:

> In this proceeding in rem the mules and wagon are considered as the offenders and are liable to forfeiture without any regard whatsoever to the personal misconduct or responsibility of the owner. The principles of law upon this subject are clearly and fully announced in *Distillery* v. *United States*, 96 U. S. 395.

In *United States* v. *Dobbins's Distillery*, 96 U. S. 395, decided in 1877, there was a seizure of a distillery, lands, and personalty for violation of sections 19 and 44 of the act of July 20, 1868, and section 5 of the act of March 31, 1868, to wit, that (1) the

distiller fraudulently failed to keep the books and make entries required by law and also made false entries for which failure the statute provided that "the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property of every kind and description on said premises used in the business there carried on, shall be forfeited to the United States (15 Stat. 132);" (2) that the distillery, the distilled spirits, and distilling apparatus seized were intended to be used in the business of a distiller in a manner to defraud the United States, for which section 44 (15 Stat. 143) provided:

> * * * And all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits or for the compounding of liquors, owned by such person, wherever found, and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in the store or other place of business of the compounder, or in any building, room, yard, or enclosure connected therewith, and used with or constituting a part of the premises; and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated, and all right, title, and interest therein of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same; and all personal property owned by or in possession of any person who has

> permitted or suffered any building, yard, or enclosure, or any part thereof, to be used for purposes of ingress or egress to or from such distillery which shall be found in any such building, yard, or enclosure, and all the right, title, and interest of every person in any premises used for ingress or egress to or from such distillery, who has knowingly suffered or permitted such premises to be used for such ingress or egress, shall be forfeited to the United States.

and (3) that the property seized was used to defraud the United States of the tax on the distilled spirits for which section 5 provided that every person so doing "shall forfeit the distillery and distilling apparatus used by him, and all distilled spirits, and all raw materials for the production of distilled spirits found in the distillery and on the distillery premises." (15 Stat. L. 59.)

It appeared that the claimant was the owner of the distillery and all the other property seized, which had been leased to the party alleged to have committed the illegal acts which worked the forfeiture, and his defense consisted of a general denial of the charges in the information and an averment that he had no knowledge of the alleged frauds.

The court said:

> Throughout the trial claimant appears to have assumed * * * that he was the accused party, and that he was on trial for a criminal offense created and defined by Congress. Instead of that, the forfeiture claimed

* * * aimed against the distillery, and the real and personal property used in connection with the same, * * * and all personal property of the kind found there together with the distilled spirits and stills wherever found.

Nor is it necessary that the owner of the property should have knowledge that the lessee and distiller was committing fraud on the public revenue in order that the information of forfeiture should be maintained. If he knowingly suffers and permits his land to be used as a site for a distillery, the law places him on the same footing as if he were the distiller and the owner of the lot where the distillery is located; and if fraud is shown in such a case the land is forfeited, just as if the distiller were owner.

Cases arise, undoubtedly, where the judgment of forfeiture necessarily carries with it, and as part of the sentence, a conviction and judgment against the person for the crime committed; and in that state of the pleadings it is clear that the proceeding is one of a criminal character; but where the information, as in this case, does not involve the personal conviction of the wrongdoer for the offense charged, the remedy of forfeiture claimed is plainly one of a civil nature, as the conviction of the wrongdoer must be obtained, if at all, in another and wholly independent proceeding. 1 Bish. Crim. Law (8th ed.), sec. 835, note 1; *United States* v. *Three Tons of Coal*, 6 Biss., 371.

* * * * *

Beyond any doubt the act of Congress in question attaches the offense to the distillery, and the real and personal property connected with same, the words of the act defining the offense being, that if any such false entry shall be made in said books, * * * or if any distiller shall omit, or refuse to produce either of said books, * * * with intent to defraud * * * the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property used in the business shall be forfeited to the United States. (15 Stat. 133.)

Nothing can be plainer in legal decision than the proposition that the offense therein defined is attached primarily to the distillery, and the real and personal property used in connection with the same, without any regard whatsoever to the personal misconduct or responsibility of the owner, beyond what necessarily arises from the fact that he leased the property to the distiller, and suffered it to be occupied and used by the lessee as a distillery.

* * * * *

* * * the legal conclusion must be that the unlawful acts of the distiller bind the owner of the property, in respect to the management of the same, as much as if they were committed by the owner himself. Power to that effect the law vests in him by virtue of his lease; and, if he abuses his trust, it is a matter to be settled between him and his lessor; but the acts of violation as to the penal conse-

> quences to the property are to be considered just the same as if they were the acts of the owner.

In *United States* v. *One Black Horse* et al., 129 Fed. 167, the District Court of Maine, in 1904, justified the seizure of the vehicle and horse hired by one Elliott from a livery keeper (who had no knowledge of its illegal use) and which was used by Elliott to transport liquor smuggled into the United States from Canada, which seizure was made under the provisions of sections 3061, 3062, and 3063 Revised Statutes, saying:

> Upon any reasonable and fair construction of the statute it was clearly the intention of the legislature to seize a vehicle which has been used either in the importation or the transportation of smuggled property. Indeed, this clear intention of the Congress is gathered without recourse to "construction," but by reading the unambiguous language of the law. Where "there is no ambiguity there is no room for construction." (*United States* v. *Morris*, 14 Pet. 464.)

The court also called attention to the provisions of section 3063 which exempt common carriers from such forfeitures unless the owner, superintendent, or agent in charge at the time of the offense was a privy thereto or had knowledge, saying the inference from this exception was that the legislature intended to include all others.

It was also said:

> The Congress has shown clearly in these statutes before us that it regards property as offending when used not only in the importation but in the transportation of smuggled goods.

In *United States* v. *Stowell*, 133 U. S. 1, decided in 1889, there was a seizure of a (1) distillery; (2) stills, boiler, and other machinery of same; and (3) butts, malt, hops, 2 horses, wagons, and other personal property found on the premises, under sections 3258 and 3305 Revised Statutes, and section 16 of the act of February 8, 1875, chapter 36 (18 Stat. 310).

The facts were that one Dixon, a brewer, permitted one Stone and one Bellows to set up an illegal still on the brewery premises; prior to this time Dixon had conveyed the brewery premises to Stowell on mortgage deed; subsequent to the alleged offenses Stowell also took a bill of sale of certain butts, malt, and hops, and one Bevington took a bill of sale of the horses, wagons, and harness; all of this property continued in the possession of Dixon.

Stowell filed a claim for the real estate, machinery, and fixtures, the butts, malt, and hops; Bevington claimed the horses, wagons, and harness.

Section 3258, Revised Statutes, provides for the registry of distilling apparatus, and further provides that "every still or distilling apparatus not so registered, together with all the personal property in the possession or custody or under the control of such person, and found in the building, or in any yard or

inclosure connected with the building in which same may be set up shall be forfeited."

Section 3305 provides that whenever a distiller omits to keep books in the form prescribed by the Commissioner of Internal Revenue, "the distillery, distilling apparatus, and the lot or tract of land on which it stands, and all personal property on said premises used in the business there carried on shall be forfeited to the United States."

Section 16 of the act of February 8, 1875, provided that when a person carrying on business of a distiller failed to give bond as required by law, or engaged in the business with the intent to defraud the United States of the tax on distilled spirits, "all distilled spirits or wines, and all stills or other apparatus, fit or intended to be used for the distillation or rectification of spirits, or for the compounding of liquors, owned by such person, wherever found; and all distilled spirits or wines and personal property found in the distillery or rectifying establishment, or in any building, room, yard, or inclosure connected therewith, and used with or constituting a part of the premises; and all the right, title, and interest of such person in the lot or tract of land on which such distillery is situated; and all right, title, and interest therein of every person who knowingly has suffered or permitted the business of a distiller to be there carried on, or has connived at the same," shall be forfeited to the United States. (18 Stat. 310.)

The court held that the butts were personal property used in the business of the brewery, and even

though sold by Dixon to Stowell before the offense was committed, had been suffered by Stowell to remain in Dixon's possession and were upon the premises at the time of the offense and at the time of seizure, and were forfeitable under each of the sections relied upon. As to the malt and hops, they were not only intended to be used in the brewery, but were in possession of Dixon, both at the time of forefeiture and of seizure, and that Stowell acquired no right in them by subsequent bill of sale, as the forfeiture took effect at the time the offenses were committed. As to the real estate, it was held that only Dixon's interest was forfeitable under section 16, which expressly limited the seizure to the right, title, and interest of the person who suffered or permitted the business of a distiller to be carried on, and that, though section 3305 in terms forfeits both personalty and realty, as far as the latter was concerned the section was to be interpreted in the light of section 16, and also of section 3262, Revised Statutes, which provides that a lessee distiller's bond must be accompanied by the written consent of the owner, mortgagor, or other lienor of the premises that same may be used for a distillery, and stipulating that in case of forfeiture of the premises or any part thereof the title to same shall vest in the United States without incumbrance. As to the boiler, engine, vats, and tanks, they were held to be real estate; but the horses, wagons, and harness were forfeited under each of the sections, having been on the premises and in the possession of Dixon at the time of the seizure.

The Supreme Court in this case laid down the rule or interpretation of statutes to prevent frauds upon he revenue as follows:

> Statutes to prevent frauds upon the revenue are considered as enacted for the public good and to suppress a public wrong, and therefore, although they impose penalties or forfeitures, are not to be construed, like penal laws generally, strictly in favor of the defendant; but they are to be fairly and reasonably construed so as to carry out the intention of the legislature. (Citing *Taylor* v. *United States*, 3 How. 197, 210; *Cliquots Champagne*, 3 Wall. 114, 145; *United States* v. *Hodson*, 10 Wall. 395, 406; *Smythe* v. *Fiske*, 23 Wall. 374, 380.)

The Circuit Court of Appeals for the Fifth Circuit has held in *United States* v. *Mincey*, 254 Fed. 287 (1918), and *Logan* v. *United States*, 260 Fed. (1919), relying on *United States* v. *Stowell* and the *Dobbins's Distillery* case, that the forfeiture is absolute and applies not only to the interest of the offender in the property seized, but also to the interest of the owner who may have been without knowledge of the offense or the intention to commit it. In the latter case the court said section 5292, Revised Statutes, which authorizes the application to the Secretary of the Treasury for remission in case of forfeiture, is persuasive that Congress intended that absence of fraud or knowledge on the part of the claimant should not prevent a declaration of forfeiture. It was also said:

> The long history of forfeitures in this country for violation of internal-revenue and cus-

> toms laws, regardless of ownership, whether innocent or guilty, repels the idea that such forfeitures conflict with the owner's right to due process of law. We regard it as settled that personal property voluntarily committed by the owner to the possession of a third party, for use by him, becomes subject to forfeiture under section 3450, though the owner has no knowledge of the illegal use to which it is put by the possessor.

In these cases the possession of the offenders was without limitation of its use; "the owners took the risk of loss of lien by destruction of the property by the purchasers," and of forfeiture by wrongful act.

In *United States* v. *One Saxon Automobile*, 257 Fed. 251, the Circuit Court of Appeals for the Fourth Circuit in a case similar to the present sustained the forfeiture of the automobile regardless of its ownership. Judge Woods said that while, where stolen property was used for the illegal purposes prohibited by section 3450, there would be no forfeiture because the owner had never in a legal sense parted with possession or ownership, since no statute could operate against his title by virtue of acts committed by a trespasser—

> this reasoning obviously does not apply when the owner voluntarily parts with his possession and intrusts his vehicle or ship to another, for in that case the owner is charged with knowledge that the person to whom he has relinquished possession, or some one acquiring possession from him, may so use the property as to defeat the collection of the revenue and

> thus bring it under the condemnation of forfeiture. * * * If one thus engaged in illicit transportation could protect his automobile from forfeiture on proof that the legal title was in some one else, or that some one else had a mortgage on it, the difficulty of enforcing the law would be greatly increased, and the penalty of forfeiture almost always evaded.

In this case the court specifically overruled its earlier decision in *United States* v. *Two Barrels Whiskey*, 96 Fed. 479.

**Similar forfeitures have been sustained under other revenue acts.**

In *United States* v. *246 Barrels Tobacco*, 103 Fed. 791, the District Court of Washington, in 1900, held that under Revised Statutes, section 3400, providing that a cigar manufacturer who violates certain internal revenue laws shall forfeit to the United States all materials, machinery, tools, etc., "which shall be found in his possession, or in his manufactory, and used in his business as such manufacturer, together with his estate or interest" in the building, lot, etc., if a bona fide mortgagee permits property to remain in the business it will be forfeited, and the mortgagee held to have assumed the risk. Provision for forfeiture of personalty under this statute is not limited to interest of offender therein as is the case of realty.

In *United States* v. *220 Patented Machines*, 99 Fed. 559, in the District Court of the Eastern District of Pennsylvania, there was an information for forfeiture

of machines for manufacturing cigars for violation of section 3400 Revised Statutes. These machines were leased at a monthly rental by claimant, who had no knowledge of their illegal use. The court said that the statute was not limited to a forfeiture of the interest of the offender therein and that if such argument should prevail "the mere device of hiring the apparatus necessary to carry on his business would enable the manufacturer to protect it from seizure by the Government, and would permit him to carry on an illegal business with limited liability."

The court further said that the owner of the machines acted at his own risk in renting them, saying:

> A pertinent analogy, I think, may be found in the case of an owner of personal property who puts it upon the premises of a tenant. Such owner is bound to know that the law permits the distraint of property upon the premises (if it does not fall within certain excepted classes) for the nonpayment of rent and he can not, therefore, be heard to complain that he did not know either that the tenant's rent was unpaid, or that his own property might be applied to pay another man's debts.

It will be seen from the above authorities that there is nothing new or novel in the proposition that for certain offenses the property of a third party who did not participate in the wrongful act and had no knowledge of it may be forfeited.

By the embargo act of January 9, 1808, it was provided that if a vessel should depart from the

United States without a clearance or permit, or if it should contrary to the provisions of the act proceed to a foreign port or place, or trade with or put on board any ship any goods, etc., such ships or vessels, goods, wares, and merchandise should be wholly forfeited.

In *United States* v. *The Little Charles*, 26 Fed. Cases 16,612, the schooner *Little Charles* was seized by reason of an alleged violation of this act; the court held that she was forfeitable whether the illegal acts were done with or without the authority of the owner.

Section 4 of the act of March 3, 1819, chapter 75, to punish piracy, etc., provides that when any vessel or boat from which any piratical aggression, search, etc., shall have been attempted or made, shall be captured and brought into the United States the same shall be adjudged and condemned to the use of the United States and her captors. In the case of *United States* v. *Brig Malek Adhel*, 2 How. 209 (1844), where a seizure was made for violation of the said act, it was argued by the claimants (1) that the act was intended to punish crimes, and that to forfeit the interest of innocent owners was to punish one man for the crimes of another; and (2) that the ship is considered the offender only when something is done for which the owner is responsible, either for his own acts or for those of his master. But the court said:

> It may be remarked that the act makes no exceptions whatsoever, whether the aggression be with or without the cooperation of the own-

ers. The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner. * * * Nor is there anything new in a provision of this sort. It is not an uncommon course in the admiralty, acting under the law of nations, to treat the vessel in which or by which, or by the master or crew thereof, a wrong or an offense has been done as the offender, without any regard whatsoever to the personal misconduct or responsibility of the owner thereof. And this is done for the necessity of the case, as the only adequate means of suppressing the offense or wrong, or insuring an indemnity to the injured party. The doctrine is also familiarly applied to cases of smuggling and other misconduct under our revenue laws, and has been applied to other kindred cases, such as acts arising on embargo and nonintercourse acts. In short, the acts of the master and crew bind the interest of the owner of the ship, whether he be innocent or guilty; and he impliedly submits to whatever the law denounces as a forfeiture attached to the ship by reason of their unlawful or wanton wrongs.

* * * * *

The act of Congress has done nothing more on this point than to affirm and enforce the general principles of the maritime law and of the law of nations.

*The Hampton*, 5 Wall. 372 (1866), is the case of a prize capture, under the act of July 13, 1861 (12

Stat. L. 256), which provided that goods, chattels, wares, and merchandize coming from or going into a State or section in insurrection by land or water, along with the vessel in which they were should be forfeited; but gave the Secretary of the Treasury a right to remit. The owner interposed no claim but one B. appeared and claimed the vessel as innocent mortgagee. His claim was denied, the court saying:

> But it is unnecessary to examine this question minutely, because an obvious principle of necessity must forbid a prize court from recognizing the doctrine here contended for. If it were once admitted in these courts, there would be an end of all prize condemnations. As soon as a war was threatened, the owners of vessels and cargoes which might be so situated as to be subject to capture, would only have to raise a sufficient sum of money on them, by bona fide mortages, to indemnify them in case of such capture. If the vessel or cargo was seized, the owner need not appear because he would be indifferent, having the value of his property in his hands already. The mortgagee having an honest mortgage which he could establish in a court of prize, would either have the property restored to him or get the amount of his mortgage out of the proceeds of the sale. The only risk run by enemy vessels or cargoes on the high seas, or by neutrals engaged in an effort to break a blockade, would be the costs and expenses of capture and condemnation, a risk too unimportant to be of any value to a belligerent in reducing his opponent to terms.

In *The Frolic*, 148 Fed. 921, the District Court of Rhode Island held that where a vessel, her tackle, and furniture are forfeited under the provisions of the Chinese immigration act of May 6, 1882, a chronometer leased to the owner as part of the vessel's equipment was forfeitable regardless of the guilt or innocence of the owner thereof. The court said that there was no greater hardship in forfeiting the appurtenance belonging to an innocent owner than in forfeiting the ship of an innocent owner, the owner of the chronometer having consented to its use.

It appears from the above decisions that under section 3450 Revised Statutes the vehicle may be forfeited irrespective of ownership. No authorities sustaining a different conclusion have been brought to our attention.

**Counsel for plaintiff in error seem to be laboring under some misunderstanding of sections 3460 and 3461 Revised Statutes.**

These sections are as follows:

> Sec. 3460. [*Proceedings on seizure of goods valued at $500 or less.*]—In all cases of seizure of any goods, wares, or merchandise, as being subject to forfeiture under any provision of the internal-revenue laws, which, in the opinion of the collector or deputy collector making the seizure, are of the appraised value of five hundred dollars or less, the said collector or deputy collector shall, except in cases otherwise provided, proceed as follows:
>
> First. He shall cause a list containing a particular description of the goods, wares, or

merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers, to be selected by him, who shall be respectable and disinterested citizens of the United States residing within the collection district wherein the seizure was made. Said list and appraisement shall be properly attested by the said collector or deputy collector and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar and fifty cents a day, to be paid in the manner provided by law for other necessary charges of collectors.

Second. If the said goods are found by the said appraisers to be of the value of five hundred dollars or less, the said collector or deputy collector shall publish a notice, for three weeks, in some newspaper of the district where the seizure was made, describing the articles, and stating the time, place, and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice.

Third. Any person claiming the goods, wares, or merchandise so seized, within the time specified in the notice, may file with the said collector or deputy collector a claim, stating his interest in the articles seized, and may execute a bond to the United States in the penal sum of two hundred and fifty dollars, with sureties to be approved by the said collector or deputy collector, conditioned that, in case of condemnation of the articles

so seized, the obligators shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bond to the collector or deputy collector he shall transmit the same, with the duplicate list or description of the goods seized, to the United States district attorney for the district, and said attorney shall proceed thereon in the ordinary manner prescribed by law.

Fourth. If no claim is interposed and no bond is given within the time above specified, the collector or deputy collector, as the case may be, shall give ten days' notice of the sale of the goods, wares, or merchandise by publication, and, at the time and place specified in the notice, shall sell the articles so seized at public auction, and, after deducting the expense of appraisement and sale, he shall deposit the proceeds to the credit of the Secretary of the Treasury.

SEC. 3461. [*Application for remission and return of proceeds—distribution.*]—Within one year after the sale of any goods, wares, or merchandise, as provided in the preceding section, any person claiming to be interested in the property sold may apply to the Secretary of the Treasury for a remission of the forfeiture thereof, or of any part thereof, and a restoration of the proceeds of the sale; and the said Secretary may grant the same upon satisfactory proof, to be furnished in such manner as he shall prescribe: *Provided*, That it shall be satisfactorily shown that the applicant, at the time of the seizure and sale of the said property, and during the intervening

> time, was absent, out of the United States, or in such circumstances as prevented him from knowing of the seizure, and that he did not know of the same; and also that the said forfeiture was incurred without wilful negligence or any intention of fraud on the part of the owner of said property. If no application for such restoration is made within one year, as hereinbefore prescribed, the Secretary of the Treasury shall, at the expiration of the said time, cause the proceeds of the sale of the said property to be distributed according to law, as in the case of goods, wares, or merchandise condemned and sold pursuant to the decree of a competent court.

It is to be noted that both these sections deal only with property of the value of $500 or less; section 3460 provides for the disposition of same by the collector, without court action where no claimant appears; and section 3461 merely provides that a claimant who can show that he was absent from the United States at the time of seizure and sale or that there were other circumstances which prevented him from knowing them, and also can show in addition that the forfeiture was without fraud or negligence on his part may have the forfeiture remitted. It is not primarily his innocence that must be shown to justify a remission of the forfeiture; it is because of his absence or for other good reason he was deprived of an opportunity to file his claim and to have his day in court that he may recover. And it is to be noted that both these sections apply only to goods of the value of $500

or less. If the goods seized are over that value, the proceeding must be by libel, and this proceeding is also necessary where though the goods are of a value less than $500 a claim has been made thereto.

Counsel for plaintiff in error seem to take the position that the only thing to be tried in court in forfeiture matters is the claimant's interest; that is not the case; it is the truth of the allegations of the libel to wit, *the illegal use of the property seized* that is to be there determined, and when that is established condemnation follows.

**The statute is plain and unambiguous.**

It is urged that this court should read into section 3450 the exception that it shall not apply to the interest of an innocent owner who is free from negligence; but the language of the section is plain and unambiguous, and there is no room for construction (*United States* v. *One Black Horse*, ante p. 10). And from the decisions above it is obvious that Congress intended as was said in *United States* v. *Two Horses*, ante p. 4, to link the fate of the vehicle with that of the articles consigned, "in order to deter parties from putting their vehicles at the disposal of those who would be likely to use them for purposes of fraud."

This necessity which Congress saw in 1866 is much greater in these days of rapid automobile transportation, rendering easy the transportation of liquors not tax paid, and more difficult the apprehension of the tax evader. Every citizen is charged with an obligation to assist in the enforcement of law, and it is not

unreasonable to say to the owner of an automobile, it is your duty to see to it that your automobile is not used in facilitating tax evasion, and if you lease your car to another you take the risk of losing same if it is used for such illegal purposes.

To quote once more from *United States* v. *One Saxon Automobile*, 257 Fed. 251, ante p. 15, "If one engaged in illicit transportation could protect his automobile from forfeiture on proof that the legal title was in some one else, or that some one else had a mortgage on it, the difficulty of enforcing the law would be greatly increased and the penalty of forfeiture almost always evaded."

Whenever the owner of an automobile entrusts it to another, he runs the risk of the loss of same by destruction from one cause or another. Against such losses he may protect himself as he sees fit, and for losses sustained he has his action against the party responsible therefor. He may likewise protect himself from loss by the forfeiture of his automobile sold on lease contract; and he is not without his redress against the offender, a fact which counsel seem either to have overlooked or ignored. It may be true that such party may be financially irresponsible, but that is a matter he must consider when he entrusts to him his property. As said this court in *United States* v. *Dobbins's Distillery*, ante p. 5:

> The legal conclusion must be that the unlawful acts of the distiller bind the owner of the property in respect to the management of the same as much as if they were committed by

> the owner himself. Power to that effect the law vests in him by virtue of the lease, and if he abuses his trust it is a matter to be settled between him and the lessor; * * *.

The conclusion is inevitable that Congress intended that section 3450 should forfeit the vehicle used in transporting or concealing goods and commodities with the intent to defraud the United States of taxes thereon, regardless of the ownership thereof by one who did not participate in the illegal acts and had no knowledge of them.

**The statute, as above construed, is constitutional.**

Counsel for plaintiff in error contend that if section 3450 is construed to authorize condemnation regardless of ownership, then it is unconstitutional, as depriving an innocent owner of his property without due process of law; they argue that it is not a necessary aid to the Government in the collection of its taxes, that it interferes with the rights of plaintiff in error to make contracts dealing with his property, that it is not a reasonable aid in carrying into effect the revenue laws, and that it is not an appropriate and plainly adapted means for carrying into execution the power to lay and collect taxes.

We submit that these contentions are without sound foundation. It is apparent from a perusal of the statutes and authorities hereinbefore cited that similar forfeiture statutes have been in effect since the very foundation of our Nation, and that the principle upon which they are based was, even before

that, established in the general law. These forfeitures are based primarily upon the proposition that it is the thing that offends. Opposing counsel cite the Boyd case, 116 U. S. 616, in support of the proposition that the proceeding is not one in rem, but against the owner of the property. What the court said in the Boyd case was: "Nor can we assent to the proposition that the proceeding is not, in effect, a proceeding against the owner of the property *as well as against the goods.*" This is not a denial that the proceeding is against the goods, and where there is no claimant it certainly is. And as has been already noted in *United States* v. *Brig Malek Adhel*, p. 18; *United States* v. *Dobbins's Distillery*, p. 5, above, this honorable court has so held. But be that as it may it has long been recognized that it is fully within the power of governments to require the owners of property to assume certain obligations regarding its control and disposition. Many of the States of the Union have enacted statutes providing for the abatement of nuisances and the closing and even sale of houses used for purposes of prostitution, and this regardless of whether the owner of the premises did or did not know of the illegal use to which his property was being put. And the supreme courts of several States have held such enactments constitutional and not inconsistent with the fourteenth amendment. See *People* v. *Barbiere*, 166 Pac. 812, and cases there cited.

There is nothing unreasonable in requiring the owner of an automobile or other vehicle to see to it

that his property is not used in the execution of frauds upon the Government. To do so does not deprive him of his right to lend or lease same, but puts upon him merely the obligation of seeing to it, on pain of confiscation, that the party to whom same is intrusted does not use it for a fraudulent purpose. He may secure himself by making any arrangement he may see fit between himself and the other party, just as he secures himself from loss by the destruction of the property. Such a requirement is in no sense an interference with his ownership, use, control, or disposition of it. And if for failure so to do his property becomes forfeited to the United States, his hardship is no greater than that endured by the innocent purchaser without notice, who is held to take nothing by his purchase after the offense. See *Henderson's Distilled Spirits*, 14 Wall. 44 (1871); *United States* v. *1,960 Bags of Coffee*, 12 U. S. 398.

And there is nothing unreasonable in requiring every owner of property to so use it as to best aid the Government in the enforcement of law and the collection of revenue. In a country as large as ours, with its great stretches of seacoast and borderland which can not by the very nature of things be effectively policed to prevent the smuggling of goods into the United States without payment of taxes thereon; and with an equal difficulty in preventing the transportation of goods within our broad domain in violation of internal-revenue statutes, especially in these days of rapid transit by motor boat, automobile, and aeroplane, it can not be denied that statutes

that put upon the owners of such property the obligation of assisting in the enforcement of these statutes and the protection of the revenues, by requiring them to see to it that their property is not used in committing frauds thereon, are a reasonable aid to our Government, and appropriate and plainly adapted to effect the desired ends. We are not dealing with a case in which property is stolen from the owner thereof, and which is then used by the thief for the prohibited purpose; we are dealing with a situation where an owner has voluntarily intrusted his property to another and in the instant case, for a good consideration for its use.

Statutes such as the one under consideration are presumed to be constitutional; they have their foundation in necessity, they have been consecrated by time, and approved and acquiesced in by universal consent; they apply equally to all; all parties have their day in court according to the rules and methods prescribed by law, and before a tribunal clothed with power to hear and determine the questions presented. We submit that plaintiff in error has not been deprived of his property without due process of law and that the judgment should be affirmed.

Respectfully submitted.

ANNETTE ABBOTT ADAMS,
*Assistant Attorney General.*

NOVEMBER, 1920.

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# J. W. GOLDSMITH, JR.-GRANT COMPANY v. UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

No. 214. Argued December 8, 1920.—Decided January 17, 1921.

1. Under § 3450, Rev. Stats., which declares, *inter alia*, that every carriage, or other conveyance whatsoever, used in the removal or for the deposit and concealment of goods removed, deposited or concealed with intent to defraud the United States of any tax thereon, shall be forfeited, an automobile, so used by a person who had it on credit from an owner who retained the title, is subject to libel and forfeiture, although the owner was without notice of the forbidden use. The statute treats the thing as the offender. P. 509.
2. So construed and applied, the statute does not deprive the owner of property in violation of the Fifth Amendment. *Id.*
3. Section 3450, in this respect, is not modified or affected by §§ 3460 and 3461. P. 512.

Affirmed.

THE case is stated in the opinion.

*Mr. L. C. Hopkins*, with whom *Mr. C. T. Hopkins*, *Mr. J. L. Hopkins* and *Mr. Charles B. Shelton* were on the brief, for plaintiff in error:

Forfeiture of the property of an innocent man for the wrong of another is violative of fundamental rights. The exact language of § 3450, Rev. Stats., if strictly taken, authorizes such a forfeiture.

Therefore § 3450 is unconstitutional, unless it can be so construed as not to authorize such a forfeiture. Such a construction is possible. *United States* v. *Doremus*, 249 U. S. 86.

If it is claimed that in *Dobbins's Distillery* v. *United States*, 96 U. S. 395, and *United States* v. *Stowell*, 133

U. S. 1, this court has decided against such a construction of statutes similar to § 3450, we respectfully submit that (with the possible exception of the butts in the latter case), those two cases are distinguishable on their facts from the case at bar. If the facts as to the butts in the *Stowell Case* are not so distinguishable, we think this court should review and overrule that part of that decision.

But no question as to the constitutionality of the acts there under consideration was made in either of those cases. The constitutional question made in the case at bar is open.

The theory that in these *in rem* proceedings the thing is the offender and forfeitable irrespective of the guilt or innocence of its owner, is a worn out fiction, to which the Circuit Courts of Appeals still adhere in these forfeiture cases. It should be discarded. *Boyd* v. *United States*, 116 U. S. 616; *Coffey* v. *United States*, 116 U. S. 427.

Congress having no general police power, and the Act of 1866, of which § 3450 is a part, being a revenue act, Congress had no power to put into it any penalty which was not a reasonable and necessary aid to the collection of the revenue. The forfeiture provision of § 3450 is not such an aid. It is neither reasonable nor necessary. If the objectionable features of § 3450 were inserted in an attempt to exercise the police power, they are void. *United States* v. *Jin Fuey Moy*, 241 U. S. 394; *United States* v. *Dewitt*, 9 Wall. 41.

*Mrs. Annette Abbott Adams*, Assistant Attorney General, for the United States:

By a long line of decisions it has been established that the forfeitures authorized by these two statutes (Rev. Stats., §§ 3450, 3062) are absolute and include the interest of an owner who was not a participant in the illegal

acts which effected the forfeiture, and had no knowledge of them. *United States* v. *Two Horses*, 28 Fed. Cas. 16,578; *United States* v. *Two Bay Mules*, 36 Fed. Rep. 84; *Dobbins's Distillery* v. *United States*, 96 U. S. 395; *United States* v. *One Black Horse*, 129 Fed. Rep. 167; *United States* v. *Stowell*, 133 U. S. 1; *United States* v. *Mincey*, 254 Fed. Rep. 287; *Logan* v. *United States*, 200 Fed. Rep. 746; and *United States* v. *One Saxon Automobile*, 257 Fed. Rep. 251, overruling *United States* v. *Two Barrels Whisky*, 96 Fed. Rep. 479.

Similar forfeitures have been sustained under other revenue acts. *United States* v. *246 1/2 Pounds of Tobacco*, 103 Fed. Rep. 791; *United States* v. *220 Patented Machines*, 99 Fed. Rep. 559; *United States* v. *The Little Charles*, 26 Fed. Cas. 16,612; *United States* v. *Brig Malek Adhel*, 2 How. 209; *The Hampton*, 5 Wall. 372; *The Frolic*, 148 Fed. Rep. 921.

The statute, so construed, is constitutional. Similar forfeiture statutes have been in effect since the foundation of the Nation, and the principle upon which they are based was, even before that, established in the general law. These forfeitures are based primarily upon the proposition that it is the thing that offends. It has long been recognized that it is within the power of government to require owners of property to assume certain obligations regarding its control and disposition. See *People* v. *Barbiere*, 33 Cal. App. 770, and cases cited.

There is nothing unreasonable in requiring the owner of a vehicle to see to it that his property is not used in the execution of frauds upon the Government. And if for failure so to do his property becomes forfeited to the United States, his hardship is no greater than that endured by the innocent purchaser without notice, who is held to take nothing by his purchase after the offense. See *Henderson's Distilled Spirits*, 14 Wall. 44; *United States* v. *1,960 Bags of Coffee*, 8 Cranch, 398.

MR. JUSTICE MCKENNA delivered the opinion of the court.

By an Act of Congress passed July 13, 1866, c. 184, 14 Stat. 98, 151 (now § 3450, Revised Statutes, and we shall so refer to it), it was enacted that, "Whenever any goods or commodities for or in respect whereof any tax is or shall be imposed, . . . are removed, or are deposited or concealed in any place, with intent to defraud the United States of such tax, or any part thereof, all such goods and commodities, . . . shall be forfeited; and in every such case all the casks, vessels, cases, or other packages whatsoever, containing, or which shall have contained, such goods or commodities, respectively, and every vessel, boat, cart, carriage, or other conveyance whatsoever, and all horses or other animals, and all things used in the removal or for the deposit or concealment thereof, respectively, shall be forfeited."

In pursuance of this enactment a libel was filed against a Hudson automobile of the appraised value of $800, and it charged that the automobile before its seizure was used by three persons who were named, in the removal and for the deposit and concealment of 58 gallons of distilled spirits upon which a tax was imposed by the United States and had not been paid.

Plaintiff in error, herein referred to as the Grant Company, was, on its petition, permitted to intervene and to give bond and replevy the automobile.

The Company subsequently answered, alleging the facts hereinafter mentioned, and, in addition, pleaded against a condemnation and forfeiture of the car the Constitution of the United States, especially Article V of Amendments, which prohibits the deprivation of life, liberty or property without due process of law.

The case was tried to a jury upon an agreed statement of facts, which recited that: The Grant Company was a

seller of automobiles and was the owner in fee simple of the automobile seized in this case, and sold it, retaining the title for unpaid purchase money, to J. G. Thompson [he was named in the libel], who was a taxi-cab operator, and W. M. Lamb, who was in the newspaper business; that the car was used by Thompson in violation of § 3450, Rev. Stats., but that such use was without the knowledge of the Company or of any of its officers, nor did it or they have any notice or reason to suspect that it would be illegally used.

The court charged the jury to render a verdict finding the car guilty, overruling a motion of the Grant Company to direct a verdict for it on the grounds: (1) That § 3450, Rev. Stats., was in violation of Article V of Amendments of the Constitution of the United States, in that it deprived the Grant Company of its property without due process of law. (2) That the section was not to be construed to forfeit the title of a third party entirely innocent of wrongdoing, and that the proper construction of the section was that it contemplated forfeiting only the interest or title of the wrongdoer. (3) That the title reserved by the Company for the balance of the purchase money had never been divested, and, therefore, could not be condemned, and that only the interest of Thompson and Lamb could be condemned.

The jury found the car guilty, and in pursuance of the verdict a judgment of condemnation and forfeiture was entered, but, as a bond with security had been given for the car, it was adjudged that the United States recover from the Grant Company as principal and J. W. Goldsmith, Jr., as security, the principal sum of $800 and costs. Execution was awarded accordingly.

Motion for a new trial was denied, and this writ of error was then prosecuted.

This statement indicates the questions in the case and, as we have seen, involves the construction of § 3450 and

its constitutionality, if it be not construed as contended by the Grant Company.

If the case were the first of its kind, it and its apparent paradoxes might compel a lengthy discussion to harmonize the section with the accepted tests of human conduct. Its words taken literally forfeit property illicitly used though the owner of it did not participate in or have knowledge of the illicit use. There is strength, therefore, in the contention that, if such be the inevitable meaning of the section, it seems to violate that justice which should be the foundation of the due process of law required by the Constitution. It is, hence, plausibly urged that such could not have been the intention of Congress, that Congress necessarily had in mind the facts and practices of the world and that, in the conveniences of business and of life, property is often and sometimes necessarily put into the possession of another than its owner. And it follows, is the contention, that Congress only intended to condemn the interest the possessor of the property might have to punish his guilt, and not to forfeit the title of the owner who was without guilt.

Regarded in this abstraction the argument is formidable, but there are other and militating considerations. Congress must have taken into account the necessities of the Government, its revenues and policies, and was faced with the necessity of making provision against their violation or evasion and the ways and means of violation or evasion. In breaches of revenue provisions some forms of property are facilities, and therefore it may be said, that Congress interposes the care and responsibility of their owners in aid of the prohibitions of the law and its punitive provisions, by ascribing to the property a certain personality, a power of complicity and guilt in the wrong. In such case there is some analogy to the law of *deodand* by which a personal chattel that was the immediate cause of the death of any reasonable creature was forfeited.

To the superstitious reason to which the rule was ascribed, Blackstone adds "that such misfortunes are in part owing to the negligence of the owner, and therefore he is properly punished by such forfeiture." And he observed, "A like punishment is in like cases inflicted by the Mosaical law: 'if an ox gore a man that he die, the ox shall be stoned, and his flesh shall not be eaten.' And, among the Athenians, whatever was the cause of a man's death, by falling upon him, was exterminated or cast out of the dominions of the republic." See also *The Blackheath*, 195 U. S. 361, 366, 367; *Liverpool &c. Navigation Co.* v. *Brooklyn Terminal*, 251 U. S. 48, 53.

But whether the reason for § 3450 be artificial or real, it is too firmly fixed in the punitive and remedial jurisprudence of the country to be now displaced. *Dobbins's Distillery* v. *United States*, 96 U. S. 395, is an example of the rulings we have before made. It cites and reviews prior cases, applying their doctrine and sustaining the constitutionality of such laws. It militates, therefore, against the view that § 3450 is not applicable to a property whose owner is without guilt. In other words, it is the ruling of that case, based on prior cases, that the thing is primarily considered the offender. And the principle and practice have examples in admiralty. *The Palmyra*, 12 Wheat. 1.

The same principle was declared in *United States* v. *Stowell*, 133 U. S. 1. The following cases at circuit may also be referred to: *United States* v. *Mincey*, 254 Fed. Rep. 287 (1918); *Logan* v. *United States*, 260 Fed. Rep. 746 (1919); *United States* v. *One Saxon Automobile*, 257 Fed. Rep. 251; *United States* v. *246 1/2 Pounds of Tobacco*, 103 Fed. Rep. 791; *United States* v. *220 Patented Machines*, 99 Fed. Rep. 559.

Counsel resist the reasoning and precedent of these cases in an argument of considerable length erected on the contention of the injustice of making an innocent man

suffer for the acts of a guilty one, and the anxious solicitude the court must feel and exercise, and which, it is said, it has often expressed, and by which it has been impelled to declare laws unconstitutional that offend against reason and justice.

The changes are rung on the contention, and illustrations are given of what is possible under the law if the contention be rejected. It is said that a Pullman sleeper can be forfeited if a bottle of illicit liquor be taken upon it by a passenger, and that an ocean steamer can be condemned to confiscation if a package of like liquor be innocently received and transported by it. Whether the indicated possibilities under the law are justified we are not called upon to consider. It has been in existence since 1866, and has not yet received such amplitude of application. When such application shall be made it will be time enough to pronounce upon it. And we also reserve opinion as to whether the section can be extended to property stolen from the owner or otherwise taken from him without his privity or consent.

Counsel further urge that § 3450 should be read in connection with §§ 3460 and 3461, and other sections of the Revised Statutes, and should be construed to provide for the forfeiture of no interest for which those sections offer protection. We are, however, unable to concur with counsel that they modify the requirement or effect of § 3450. They have no relation to the latter section, nor is their remedy applicable to cases under that section.

There is an intimation that in the prior cases there was something in the relation of the parties to the property or its uses from which it was possible to infer its destination to an illegal purpose; at any rate, the risk of such purpose; and that such relation had influence in the decision of the cases.

We are unable to accept the intimation. There may, indeed, be greater risk to the owner of property in one

form or purpose of its bailment than in another, but wrong cannot be imputed to him by reason of the form or purpose. It is the illegal use that is the material consideration, it is that which works the forfeiture, the guilt or innocence of its owner being accidental. If we should regard simply the adaptability of a particular form of property to an illegal purpose, we should have to ascribe facility to an automobile as an aid to the violation of the law. It is a "thing" that can be used in the removal of "goods and commodities" and the law is explicit in its condemnation of such things.

*Judgment affirmed.*

MR. JUSTICE MCREYNOLDS dissents.